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Review of the efficiency of the administrative and financial functioning of the United Nations

Report on the activities of the Office of Internal Oversight Services

Review of results-based management in the United Nations

Report of the Office of Internal Oversight Services

Summary

Results-based management involves focusing on what occurs beyond the process of translating inputs into outputs, namely outcomes (or "expected accomplishments") to which it seeks to bring accountability. An inherent constraint of results-based management is that a formalistic approach to codifying how to achieve outcomes can stifle the innovation and flexibility required to achieve those outcomes.

The Office of Internal Oversight Services (OIOS) finds that the introduction of results-based management in the Secretariat has been dealt with as an addition to the myriad rules and procedural requirements that govern inputs, activities, monitoring and reporting. It has not been accompanied by any relaxation of the volume, scope or detail of regulatory frameworks pertaining to financial, programmatic and human resource management. For each of these, there are separate and incompatible systems, rules and regulations.

OIOS finds that the shortcomings of results-based management go back to the original design, as reflected in General Assembly resolution 55/231 on results-based budgeting. As a first step towards results-based management, this resolution was inadequate because it:

(a) Barred the use of indicators of achievement for adjustment of resources;

* A/63/150 and Corr.1.

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(b) Reiterated limitations on the authority of the Secretary-General to shift resources between post and non-post budget lines.

Moreover, OIOS finds that:

(a) The Secretariat statements of results that are based on General Assembly resolutions are often vague and the determination of success does not lend itself to impartial, transparent and precise measurement. Outcomes are invariably influenced by multiple actors and external risk factors outside United Nations control;

(b) Many of the results planned for have been expressed in a self-serving manner, lack credible methods for verification and involve reporting that rests upon subjective judgement. Performance measures frequently lack baselines and targets and many are not regularly tracked;

(c) OIOS also notes that "expected accomplishments" largely relate to individual sections or divisions, with no target-setting or measurement for objectives that transcend divisions or departments or seek to capture longer-term objectives of the United Nations as a whole. Results-based management has thus not contributed to higher order policy prioritization or to laying the ground for strategic debate.

OIOS concludes that although aspirational results are utilized to justify approval of budgets, the actual attainment or non-attainment of results is of no discernable consequence to subsequent resource allocation or other decision-making. Financial and programmatic records do not compare. Reporting on results does not feed into the budgeting calendar. The metrics do not exist to systematically determine efficiency and effectiveness of the organization. OIOS also finds that the exercise of accountability is not cast from review of outcomes but from ascertaining that there is no negligence, misconduct or breach of rules and regulations.

Also, the rules and regulations for programme planning, budgeting, monitoring and evaluation have blurred the distinction between the separate roles of evaluation as opposed to monitoring and of independent evaluation as opposed to self-evaluation.

Results-based management is ultimately not within the powers of the Secretary-General to implement within his restricted administrative authority. It is not a technical skills challenge. The "culture" of the Organization will not be changed by data collection efforts of "practitioners" within the Secretariat. If results actually produced do not guide General Assembly decision-making and if simultaneously there is no relaxation of process controls, results-based management will continue to be an administrative chore of no real utility.

In spite of the shortcomings raised, OIOS recognizes that results-based management is, at some level, likely to remain an aspiration for the Organization. In this spirit, OIOS offers six recommendations:

1. Establishment of a policy framework to outline the eventual extent and limitations of results-based management at the United Nations Secretariat, to be accompanied by an internal control framework that addresses delegation of authority and the criteria of decision-making to be informed by results-based management.

2. Initiation of a review and revision to the rules and regulations pertaining to programme planning, budgeting, monitoring and evaluation.

3. Consolidation of the reporting obligations of the Secretary-General to the General Assembly.

4. Integration of programmatic results frameworks within the first phase of the enterprise resource planning strategy of the Organization.

5. Update and revise the range of output categories subject to planning and monitoring.

6. Strengthen the technical and methodological capacities of the Organization.

OIOS selected the topic of results-based management on the basis of previous audits, inspections and evaluations, having identified it as a Secretariat-wide vulnerability. OIOS also noted that the Assembly had endorsed a results-based management benchmarking framework developed by the Joint Inspection Unit. The present report is based on a review of practices in individual Secretariat entities, combined with a desk review of General Assembly resolutions relevant to results-based management, Secretariat reporting and evaluations of results-based management in other international organizations.

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I. Introduction

A. Results-based management: definitions, mandate and instruments

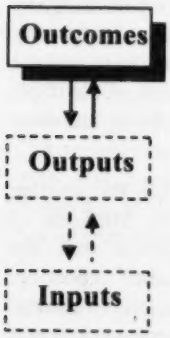
1. The Office of Internal Oversight Services (OIOS) Glossary of Monitoring and Evaluation Terms[1] defines results-based management as:

> "A management strategy by which the Secretariat ensures that its processes, outputs and services contribute to the achievement of clearly stated expected accomplishments and objectives. It is focused on achieving results and improving performance, integrating lessons learned into management decisions and monitoring of and reporting on performance".

2. Results-based budgeting, however, is defined as a:

> "programme budget process in which (a) programme formulation revolves around a set of predefined objectives and expected results, (b) expected results justify the resource requirements which are derived from and linked to outputs required to achieve such results and (c) in which actual performance in achieving results is measured by objective performance indicators".[2]

Figure I
Results-based management is about what occurs beyond outputs



3. In their most essential form, both results-based budgeting and results-based management build upon assumption of a logical hierarchy or chain of cause-and-effect relationships from inputs through outputs to outcomes (and eventually beyond to "impact" as a separate category of ultimate, longer-term effects). Both results-based budgeting and results-based management involve an intention to bring focus to outcomes. Results-based budgeting brings particular emphasis to outcomes in conjunction with consideration of budgets and results-based management shifts the focus of attention to such results throughout the cycle of planning, budgeting, work implementation, monitoring and evaluation. With its focus on outcomes, results-based management involves a paradigmatic shift away from a culture of compliance with rules and regulations pertaining to processes and activities as

[1] Office of Internal Oversight Services, Glossary of Monitoring and Evaluation Terms, available at http://www.un.org/Depts/oios/mecd/mecd_glossary/index.htm.

[2] United Nations guide to results-based budgeting, available at http://ppbd.un.org/pdf/Rbbguide.pdf, annex 1.

embodying the highest virtue of public service. With outcomes thus being the principal entry point to performance reporting and assessment, the presumptive corollary is a lesser burden of procedural requirement, albeit without thereby compromising standards of professional conduct. From an evaluative perspective, a critical distinction between outputs and outcomes is that efficiency is associated with the production of outputs, while effectiveness is associated with attainment of outcomes.

4. The legislative basis of the planning and budgeting process of the United Nations Secretariat[3] is:

(a) General Assembly resolution 41/213, which stipulates the roles of the Assembly and its subsidiary bodies in reviewing the budget;

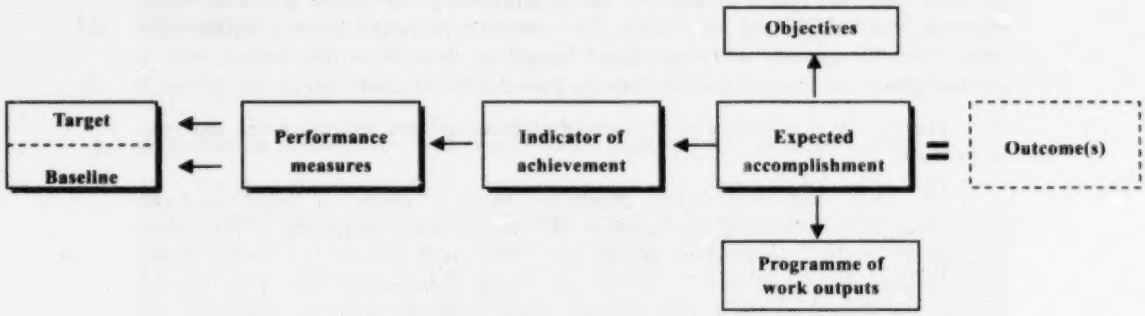
(b) The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8), which spell out the cycle, structure and periodicity of the budget, together with responsibilities for planning, monitoring and reporting.

5. In 2001, the General Assembly decided, by its resolution 55/231, to introduce results-based budgeting on condition of compliance with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, the applicability of which have since been reaffirmed (see, for example, Assembly resolution 56/253). With resolutions 57/290 B and 59/296, results-based budgeting was subsequently also mandated in respect of peacekeeping budgets. Resolution 55/231 followed the goal expressed by the Secretary-General in his 1997 reform programme, of "shifting the focus of planning, budgeting, reporting and oversight from how things are done to what is accomplished" (see A/51/950, para. 240).

6. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation are also the foundation for instructions and guidelines that are periodically issued in support of planning, budgeting and performance reporting. Since the budget for the biennium 2002-2003, planning starts with entities articulating a strategic framework to implement applicable intergovernmental mandates. This framework is centred on subprogrammes (usually based on an organizational division), in reference to which there are overarching objectives and "expected accomplishments" corresponding to more specific outcomes to which the division concerned intends to contribute within a given biennium. Expected accomplishments are thus the key level or "unit of account" for results-based planning, budgeting and management at the United Nations. The expected accomplishments are accompanied by "indicators of achievement". At the budget preparation stage, "performance measures" that capture the anticipated degree of change in the indicator of achievement (i.e., from baseline to target) and a schedule of outputs is added. The process is also described in the proposed strategic framework for the period 2008-2009 (A/61/6/(Part one)).

[3] Comprising all entities that draw resources from the regular budget of the United Nations.

Figure 2
Corresponding to outcomes, United Nations "accomplishments" are defined with several subcomponents



7. Lastly, the requirements of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation also prescribe the scope, form and content of the Integrated Monitoring and Documentation Information System (IMDIS), the information technology system used to support programme planning and performance reporting. IMDIS also serves as a vehicle for compiling the biennial programme performance report of the Secretary-General, which thus completes each cycle of results planning and management. For the biennium 2008-2009, the United Nations Secretariat, including the Department of Peacekeeping Operations but not individual peacekeeping missions, has 674 separate expected accomplishments, for which there are 1,119 indicators of achievement, for the 214 subprogrammes of the 32 main budget sections of the Secretariat, compared with 494 expected accomplishments and 679 indicators of achievement in the biennium 2002-2003. OIOS notes that, among the expected accomplishments of the Secretariat there is no particular order of priority.

B. Review objectives and methodology

8. Within the mandate of OIOS (see General Assembly resolution 48/218 B), the review of results-based management was selected on the basis of previous audits, inspections and evaluations having identified the use of results-based management as a Secretariat-wide vulnerability. OIOS also notes that the Assembly has endorsed a results-based management benchmarking framework developed by the Joint Inspection Unit (see Assembly resolution 60/257 and the report of the Committee for Programme and Coordination (A/60/16 and Corr.1, para. 248)) and recommended its use as a tool for the oversight bodies; that framework has thus served to inform the current review. OIOS also notes that the Steering Committee on the Comprehensive Review of Governance and Oversight within the United Nations and its Funds, Programmes and Specialized Agencies made the comprehensive implementation of results-based management the first of its recommendations on governance (see vol. III of the report of the Committee contained in document A/60/883/Add.1).

9. The present review has as its overall objective an assessment of the efficiency, effectiveness and relevance of the overall framework of results-based management in the United Nations Secretariat, in order to thereby inform the deliberations of Member States on future policies for the Organization. The review was undertaken between March 2007 and June 2008. The materials reviewed cover a longer time span, from the genesis of results-based budgeting through to the present, with a main emphasis on documentation from the period 2004 to 2007.

10. The review is informed by five major methods of data collection and analysis, as follows:

(a) Data and conclusions emerging from a series of eight in-depth inspections of results-based management and results-based budgeting in individual Secretariat entities undertaken during the 2007-2008 period: (i) results-based management reviews of the Economic and Social Commission for Asia and the Pacific, the Office of the United Nations High Commissioner for Refugees, the Office for the Coordination of Humanitarian Affairs and the United Nations Environment Programme[4] and (ii) results-based budgeting reviews of the United Nations Interim Administration Mission in Kosovo, the United Nations Mission in Liberia, the United Nations Mission in the Sudan and the United Nations Integrated Mission in Timor-Leste.[5] These involved an estimated total of 643 individual interviews, 104 focus group meetings and a combined total of 1,106 survey respondents (estimated response rate 15.7 per cent);

(b) Recent OIOS thematic reviews of relevance to results-based management, such as on the use of client satisfaction data and web metrics as performance measures,[6] evaluation capacities and needs[7] and compliance with programme performance reporting requirements;[8]

(c) Desk review of the various resolutions, reports, systems and guidelines issued by the General Assembly, the Secretary-General and programme managers that address, directly or indirectly, results-based management in the United Nations Secretariat;

(d) A review of the database of United Nations Secretariat results frameworks as recorded in IMDIS;

(e) A desk review of evaluative evidence pertaining to implementation of results-based management in other multilateral organizations and in national public administrations.

11. There are no internationally agreed upon standards that define what should be included within a results-based management system. The review by OIOS was guided by a series of analytical questions subsumed under four broad headings: (a) clarity of objectives; (b) performance measures; (c) practice of monitoring and evaluation; and (d) the utility for decision-making of results-based management information.

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[4] OIOS report INS-07-003, INS-07-005, INS-07-006 and IED-08-005, respectively.

[5] OIOS report INS-07-001, INS-07-002, INS-07-004 and INS-08-001, respectively. Peacekeeping results-based budgeting reports have also been synthesized into report INS-08-02.

[6] OIOS report IED-2006-005.

[7] OIOS report IED-2006-006.

[8] See OIOS reports INS-COM-08-001 (Compliance with programme performance documentation at end of 2006-2007 biennium) and INS-COM-07-002 (IMDIS 18-month reporting status).

12. The draft of the present report was shared with management and the comments of the Secretary-General are reflected in the report.

II. Findings

A. Clarity of objectives

1. Articulation of the purpose of results-based management as an enterprise

13. OIOS notes that there is no clear common understanding of the objectives of results-based management at the United Nations Secretariat. General Assembly resolution 55/231 provides a legislative mandate for results-based budgeting, not results-based management. For the larger enterprise of results-based management, the Assembly has given its endorsement by extension through resolution 60/257 by which it adopted the Joint Inspection Unit results-based management benchmarking framework that had been presented to and recommended by the Committee for Programme and Coordination. Building on the Joint Inspection Unit framework, the United Nations System Chief Executives Board for Coordination (CEB) has likewise adopted results-based management as a tool of reform and has proceeded to host a "community of practice" (see CEB/2005/HLCM/R.6, para. 48). Moreover, further to Assembly resolution 61/245, the Secretary-General has presented to the Assembly a review of results-based management in the context of accountability, risk management and internal control (A/62/701). *In commenting on the draft of the current report, the Deputy Secretary-General stated that the Secretariat has been implementing results-based budgeting not results-based management and that although these terms are related and often used interchangeably, they are in fact two different management concepts.*

14. The review of OIOS is guided by the understanding that introduction of results-based budgeting in the Secretariat was intended as a step towards results-based management.[9] However, OIOS finds that neither Assembly resolution 60/257 nor any other Assembly resolution explicitly defines what results-based management is meant to do for the Organization. OIOS finds a range of views, from those who see it narrowly either as a presentational tool convenient for fund-raising (CEB/2007/HLCM-HLPC/XIII/2, para. 9) or as a compliance-reporting mechanism, through to those who see results-based management as aimed at changing the internal organizational "culture" or being aimed at facilitating more fundamental reform of how the United Nations functions (E/2007/69, para. 69) at the level of strategic prioritization.

15. As noted by the Joint Inspection Unit, in the Secretariat the term results-based management is, in practice, often used interchangeably (JIU/REP/2006/6, para. 31) with results-based budgeting. In this regard, OIOS notes that the original guidelines on results-based budgeting[10] state that "RBB is not just about budgets, but has the potential to bring about a change in strategic management, accountability and responsibilities". The objectives of results-based management have been more explicitly expressed within the United Nations Development Group with which a

[9] OIOS also notes that General Assembly resolution 55/231 refers to "gradual implementation".

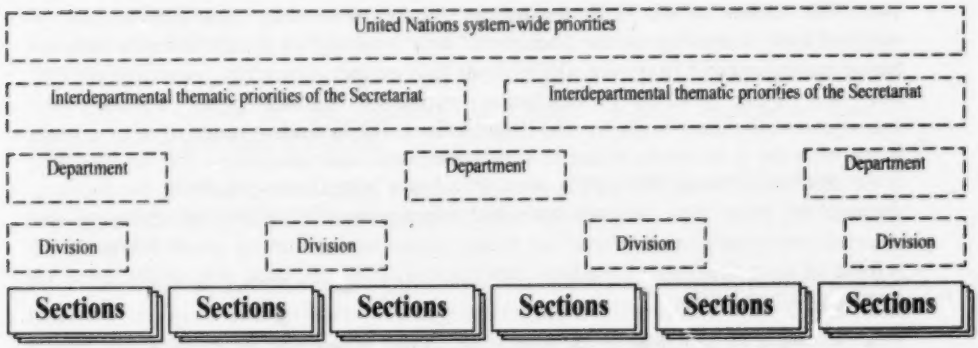
[10] Available at http://ppbd.un.org/pdf/Rbbguide.pdf.

number of United Nations Secretariat entities are affiliated[11] and for which a body of definitions, policy and guidance materials have been agreed.[12]

2. Priority of expected accomplishments

16. OIOS notes that expected accomplishments are the sole level of results formulation matched by indicators or measurable performance targets. The expected accomplishments actually usually correspond to the work of individual sections. Similar formulation of results, with associated indicators and performance targets, is not done at the level of division, department or budget section, or for the United Nations as a whole. The results-based management framework does not therefore bring any degree of measurability or evidence-gathering to the strategic debate and decision-making pertaining to higher order organizational priorities. United Nations staff frequently express frustration with the absence of a clear framework for overarching Secretariat leadership and coordination. At the same time, they recognize that results-based management needs to be adapted to the multiplicity of operating environments at the United Nations. OIOS observes, and is supported by survey findings and personal testimony from virtually all stakeholders in the United Nations Secretariat programmes reviewed, that the planning and budgeting process does not facilitate an appropriate level of strategic debate and decision-making. The budget process is predominantly focused on scrutiny of posts and other inputs, with no clear reference to strategic priorities or past contributions to outcome-level results.

Figure III
Hierarchy of accomplishments in the context of strategic issues faced by the United Nations



[11] Office of the High Commissioner for Human Rights, United Nations Human Settlements Programme, United Nations Office on Drugs and Crime, Department of Economic and Social Affairs, United Nations Conference on Trade and Development, Department of Public Information, Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, United Nations Environment Programme, Office of the United Nations High Commissioner for Refugees, Office for the Coordination of Humanitarian Assistance.

[12] See, for example, http://www.undg.org/archive_docs/2485-Results-Based_Management_Terminology_-_Final_version.doc.

3. Precise attribution and accountability in terms of results orientation

17. Whereas results-based management involves the intention of expanding accountability from process alone to also comprise attainment of results, the dilemma is that there is a corresponding loss of precision in the level of control. With multiple actors and factors exerting an influence upon outcomes, the degree of uncertainty, risk and external influence expands, while the possibility of attributing change to its individual component diminishes. In fact, the more outcome- or impact-oriented that chosen operational objectives are, the more difficult it becomes to codify practice into rules and regulations. The more one tries to proceduralize attainment of results, the more likely it becomes that the innovation and flexibility required to attain results is undermined.

18. Interviews with United Nations Secretariat managers and staff show that there is a high awareness of the attribution problems of results-based management. Staff are fully aware of how their authority is limited, how results often depend on actions that are outside their own control and, in particular, what they cannot reasonably be held responsible for. Managers thus are most comfortable with result statements that correspond to what they are able to control. Inputs, activities and outputs are possible to keep track of and accountability is not subject to dispute. OIOS notes that the degree of precision to which possible attribution and accountability can be defined flows from the original guidance materials using the definition: "Accomplishments are the direct consequence or effect of the generation of outputs and lead to the fulfilment of a certain objective".[2] This can be interpreted in a manner that trivializes the cause and effect relationships that are at play. The fact that outputs ought to significantly affect expected accomplishments does not necessarily mean that they do.

B. Performance measurement

1. Measurement of expected accomplishments

19. Based on its inspection of individual entities as well as its review of results frameworks in the Secretariat as recorded in IMDIS, OIOS found that the degree of results-orientation reflected in the expected accomplishments varies greatly. Although some expected accomplishments do reflect change at the level of outcomes, there are also many expected accomplishments and associated indicators of achievement that have been formulated at the level of activities and outputs, typically the number of meetings organized or website visitors, the volume of documents disseminated, the number of Member States attending meetings or participating in projects and citations of the work of a particular section. For some programmes reviewed in depth by OIOS, the bulk of expected accomplishments are formulated in such terms. At the same time, OIOS identified instances of a logical disconnect between the expected accomplishments on the one hand and the indicators on the other, that is, that they are two separate substantive phenomena.

20. For example, while an expected accomplishment might be framed as "effective implementation of outcomes of global conferences", the indicator may be framed not in terms of outcome itself but by degree of satisfaction expressed by participants at a particular meeting backstopped by the division in question. In some other cases, measurement boils down to the number of participants in events for which the United Nations provides travel costs and per diem. In other cases, the performance

measures speak to manpower resources or volume of funding that has been raised by the division or section in question.

2. Objectivity and precision of measurements

21. In several of the results-based management inspections undertaken by OIOS, it was found that the majority of indicators did not satisfy the "SMART" criteria (specific, measurable, attainable, relevant and time-bound) meaning, in short, they were either a poor substantive reflection of the intended expected accomplishment or that they were not actually possible to track in practice. In many cases, their observation was fundamentally dependent upon the subjective judgement of the programme managers in question, for example, where indicators revolve around "critical initiatives" of a given division or "key actions" on the part of Member States. In many cases programmatic results data rest on anecdotal evidence with a poor methodological basis or are absent altogether. An illustration is provided by the case of client benefits, notionally the key entry point for expected accomplishments as defined in the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (rule 105.4 (a) (iii)): "... those benefits or changes expected to accrue to users or beneficiaries ...". In a review of practices in 22 Secretariat departments,[13] OIOS found the definition of clients to be inconsistent and the determination of benefits or satisfaction frequently to be based on methodologies that lacked rigour. OIOS found a number of instances of surveys administered by selecting an activity or an output that is generally considered a success and thus not typical of the full range of services needed to make progress towards an expected accomplishment. Along the same lines, there were several cases of satisfaction ratings being derived from unbalanced scales, whereby the number or labelling of response options are tilted towards yielding favourable ratings. OIOS also noted that practices for maintaining respondent anonymity vary.

3. Measurement as outcome

22. Another area of results-based management practice that involves indicators that inherently defy the idea of results-orientation is the standardized formulations pertaining to executive direction and management, as prescribed by the budget instructions. All pre-defined indicators are expressed in terms of administrative or bureaucratic milestones that do not necessarily connect with the much more substantive expected accomplishments. For both the 2004-2005 and the 2006-2007 bienniums, budget instructions[14] specified "Programme of work is effectively managed and supported by staff and financial resources" as a standardized expected accomplishment with the associated indicators stipulated as "Timely delivery of outputs and services", "Timely recruitment and placement of staff" and "Full utilization of resources". However, what is thereby subjected to measurement, i.e., timeliness and expense, are certainly not outcomes in the results-based management sense. Meanwhile, the notion of effectiveness is trivialized by its association with activity and process instead of attainment of outcomes.

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[13] OIOS report IED-2006-005.

[14] Para. 31, annex 6, of http://ppbd.un.org/bi04/Instructions.doc and para. 52, annex 5, of http://ppbd.un.org/Bi06/.

23. On the other hand, OIOS found results frameworks for which the intergovernmental bodies had specified indicators of achievement corresponding to outcomes that are undoubtedly desirable, but for which respective entities should be held responsible. A case in point is OIOS's own results framework, for which, in response to General Assembly expectations, indicators have been defined in terms of the degree to which oversight recommendations have been implemented. OIOS notes the ensuing perverse underlying incentive: namely, to concentrate on recommendations that are easy to implement.

4. Absence or disconnect of performance-measure baselines and targets

24. OIOS found[15] that in respect of a quarter of the 974 indicators specified for the biennium 2004-2005 no observations were ever recorded. Among those for which observations were made, a high proportion required a significant degree of subjective assessment. An issue separate from the choice of indicator as such is that of target-setting. Strategic planning guidance and budget instruction materials offer no precision as to how managers should set their ambitions: between what they are more or less certain to achieve on the one hand and imaginary "stretch" goals on the other. There are several instances of indicators of achievement being disconnected from performance measures. An illustrative disconnect between expected accomplishment, indicator of achievement and performance measure is the case of "national capacities for ... strengthened" (as the expected accomplishment) being verified by the indicator of achievement "number of countries implementing (e.g., legislation) ..." and the performance measure being "number of delegations attending ...". Elsewhere performance measures have been given no baseline and no target at the time of budget approval. Because there is no requirement that resource allocation be disciplined through ex ante vetting of the realism behind stated results ambitions, programme managers are able, in effect, to set their own performance targets once the biennium is under way. That is possible by retroactively setting baselines which were "to be estimated" at time of budget approval, by substituting one measure for another or by introducing altogether new items of measurement.

5. Performance assessment on the basis of inputs and outputs

25. In respect of both General Assembly deliberations and internal management, the notions of performance measurement and assessment remain predominantly geared towards scrutiny of inputs, activities and outputs rather than outcome-level results. This applies across the programmatic, financial and personnel management realms. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (Regulation 6.1 and Rule 106.1) stipulate that programmatic accomplishments should be measured by delivery of scheduled outputs. Assembly resolution 55/231 prescribes that requested resources should be justified in terms of the requirements of output delivery. The budget performance reports track expenditure versus line-item appropriation. Also, it is the rate of output implementation, and in particular the conformity of actual output delivery with a legislatively mandated programme of work, that remains the aspect of programme performance assessment upon which the Assembly puts the greatest emphasis.[16] For

[15] OIOS report IED-2006-006.

[16] As evidenced by time devoted by the Committee for Programme and Coordination to review of the programme performance report.

the biennium 2008-2009, more than 44.000 individual outputs have thus been mandated. On the part of Secretariat staff, a frequently cited connotation of results-based management is that it should free them from detailed and burdensome regulatory detail, as long as they adhere to appropriate standards of professional conduct. However, OIOS finds that the introduction of results-based management has not been accompanied by any discernable relaxation of the scope, detail or overall burden of effort associated with the body of rules and regulations that aim to control and guide what managers and staff may and may not do.

C. Practice of monitoring and evaluation

1. Multiple tracks of monitoring and reporting

26. Secretariat monitoring practices are based on separate procedures, systems and reporting tracks pertaining respectively to financial, programmatic and staff planning processes. Each of the three tracks has different notions of success and performance, which cannot readily be reconciled or compared. Budget performance is reported in terms of expenditure per budget line, while the programme performance report presents outputs by subprogrammes. Individual workplans follow generic descriptions of activity rather than the substantive results frameworks that give rationale to the budgets of their respective organizational units. OIOS recognizes that different organizational functions require different types and detail of information but also understands results-based management as being aimed at enabling stakeholders to obtain an overall view of the work and performance of the Organization. The Secretary-General has acknowledged that improved alignment of budgetary data with output records will be needed to promote progress towards results-based management (A/61/826, para. 15) and OIOS concurs with his view that: "the separation of programmatic and financial planning and reporting directly contributes to the governance problems of the organization, impeding determination of effectiveness and strategic consideration of substantive issues" (A/60/733, para. 20).

Table
Separate tracks of performance planning and reporting

	Financial	*Programmatic*	*Personnel*
Procedures	ST/SGB/2003/7	ST/SGB/2000/8	ST/SGB/2007/4 and ST/SGB/2007/3
Information technology system	Integrated Management Information System (IMIS)	Integrated Monitoring and Documentation Information System (IMDIS)	Electronic performance assessment system (e-PAS)
Reviews	(First and second) budget performance report (A/61/593 and A/62/575)	Programme performance report (A/63/70)	Annual performance appraisal

27. OIOS notes that there have been a number of General Assembly resolutions in support of report consolidation (for example, resolutions 57/300, para. 20, 58/316, annex, para. 6, and 59/313, para. 16), but that the proposed template for consolidated annual reports did not meet with the approval of Member States (see A/62/352 and A/62/164). OIOS believes it to be essential that performance-related reporting from the Secretary-General be consolidated from its current multiple, fragmented tracks and proposes that the assumption that such reporting would need to be complementary to existing reports be revisited (see resolution 60/283, sect. V, para. 5). This is not to the detriment of future results-based management systems and practices being tailored to the unique circumstances of particular subsectors and individual entities.

28. OIOS notes with concern that integration of programmatic performance information has not been clearly identified as a necessary component of what needs to be integrated within the planned enterprise resource planning system (see A/62/510) that is being developed as part of the Secretariat's information, communications and technology strategy (see A/62/793). OIOS stresses that if the enterprise resource planning strategy is to enable the Organization to deliver on the rationale given, namely that "the absence of an integrated information system for managing resources is seriously hampering the ability of the United Nations to deliver results effectively and efficiently" (see A/62/510, summary), programme results frameworks need to be an integral component.

2. Data comparability within or among programmes

29. From a results-based management perspective, outputs matter only insofar as they contribute to outcomes. Outputs are, however, the maximum level at which some degree of data aggregation and comparability is available. OIOS notes IMDIS records showing that the total number of outputs produced by the Secretariat declined from 51,333 during the biennium 2002-2003 to 45,714 during the biennium 2006-2007. The standard output categories currently monitored are substantive servicing of meetings; parliamentary documentation; expert groups, rapporteurs, depository services; recurrent publications; non-recurrent publications; other substantive activities; advisory services; training courses, seminars and workshops; fellowships and grants; field projects; conference services; administration; and oversight. OIOS notes that the categories primarily reflect the work of the United Nations in the 1970s or before and do not capture the diversity of work associated with the much-expanded operational field activities of the United Nations in the development, peacekeeping and humanitarian assistance arenas. OIOS thus recommends that the typology of Secretariat outputs be comprehensively revised.

3. Frequency of evaluations

30. OIOS notes the multiple calls that have been made for strengthening of evaluation in the Secretariat (for example, General Assembly resolutions 37/234, 48/218 B, 53/207, 58/269, 59/275 and 60/257). Further, according to the OIOS assessment of evaluation capacities and needs at the Secretariat,[17] overall evaluation capacity at the central, programme and subprogramme levels is inadequate. This is because of insufficient financial and staffing resources, uneven competencies and lack of support from senior leadership. Budgets for evaluation continue to be low,

[17] OIOS report INS-07-002.

despite showing some improvement. By three measures (dedicated evaluation function, evaluation policies and evaluation coverage) capacity has been growing. In the proposed programme budget for the biennium 2008-2009, programme managers estimate that about $44.5 million are to be dedicated to the conduct of monitoring and evaluation activities, representing an increase of 78 per cent compared with the biennium 2006-2007. However, even with these increases, resources dedicated to evaluation are still below the capacity benchmark of between 1 and 3 per cent of total programme costs being earmarked for evaluation activities suggested by the Joint Inspection Unit report on oversight lacunae in the United Nations system (JIU/REP/2006/2). The body of available evaluative evidence on outcomes remains limited in scope, depth, rigour and regularity (A/60/733, paras. 35 and 39).

31. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation give legitimacy to the generic role of the evaluation function, especially that "all programmes shall be evaluated on a regular, periodic basis" (rule 107.2). However, it also brings ambiguity to roles and responsibilities, in particular with regard to evaluation versus periodic programme performance monitoring, assessment and reporting. Also, it does not clearly distinguish between the complementary nature and roles of self-evaluation (i.e., as undertaken under the auspices of respective programme managers) as opposed to independent evaluation (as undertaken by oversight bodies that are not directed by the managers of the programmes in question). Meanwhile, OIOS notes that the link between evaluation and planning and budgeting (see General Assembly resolution 61/235, para. 17) remains a major challenge.

D. Decision-making utility

1. Utility of reporting programme results

32. Through observations from its previously close involvement with the programme performance report, but also confirmed through interviews and focus group studies, the view of OIOS is that reporting of programmatic results by client departments is largely motivated by a desire to comply with instructions rather than perceived utility for their own purposes. IMDIS is, in particular, perceived as being of little practical utility to programme managers and their operational decision-making. Although practice is variable, the overall trend is for IMDIS to get populated with performance data only once deadlines given from United Nations Headquarters draw to a close. As the biennium 2006-2007 came to an end, only 4 out of 34 budget sections had updated IMDIS with rudimentary data for all the planned periodic observations on indicators of achievement.[18] By the end of the biennium 2004-2005, data collection had not been done in respect of 44 per cent of planned observations against indicators of achievement,[19] and only one department collected data on all its planned observation points. Shortly before final deadlines loom however, the observance of reporting requirements rapidly increases. Among peacekeeping missions too, it is apparent that results frameworks in the context of results-based budgeting have not acquired significant operational decision-making

[18] OIOS report INS-COM-08-001.

[19] Sample of 24 departments, see OIOS report IED-2006-006, para. 36.

utility beyond nominally giving justice to budget approval.[20] OIOS thus fully concurs with the Secretary-General (A/62/701, para. 64) that: "the planning, budgeting, monitoring and evaluation activities, including the reporting on achievement of results, have been viewed more as a compliance matter rather than as a management tool for understanding what has worked well and why".

2. Influence of programme results on resource allocation

33. The review of OIOS of results-based management, both at the level of individual entities and in the desk review of documentation from the deliberations of intergovernmental bodies, finds that the achievement or non-achievement of programme objectives ultimately has few consequences for resource allocation, work planning or assessment of managerial performance (A/60/692, para. 74). Decisions are made on the basis of other, not easily identifiable, criteria. In the peacekeeping arena, results-based budgeting frameworks have a different life altogether from the mission implementation plans, which are the real plans that guide mission management. A fundamental condition of associating results-based budgeting with accountability, namely that a priori formulation and ex post facto assessment is accompanied by clarity about how information is utilized, does not exist.[21] These findings mirror that of a recent evaluation of results-based management at the United Nations Development Programme that: "Adjusting work in response to results is the cornerstone of an effective results-based management system. This study has failed to find any convincing evidence that suggests that results are influencing management".[22]

34. OIOS finds that a critical limitation of the original resolution on results-based budgeting (resolution 55/231) to be its proviso that indicators of achievement should "not constitute a method by which to adjust the level of approved resources" and that "requested resources should continue to be justified in terms of the requirements of output delivery" . The resolution also reiterated that any transfers between post and non-post resources would continue to require prior approval of the Assembly. OIOS believes that resource allocation decisions should not, in any circumstances, be mechanically tied to past performance. However, the above proviso seems contrary to the idea of results-based management itself. As noted by the Steering Committee on the Comprehensive Review of Governance and Oversight, discussions and decision-making on budgets and administrative issues typically revolve around detailed issues relating to posts and other expenditure items rather than strategic requirements (see vol. III, para. 18, of the report of the Committee contained in document A/60/883/Add.1). Accordingly, the budget and expenditure management system, (IMIS), is line-item based and does not allow for aggregation or comparison of costs to the accomplishment level. OIOS also notes that the budget cycle is such that, when the programme performance report in respect of one biennium gets tabled, the Assembly has already concluded its deliberations on the budget for the next. This disconnect has been known from the outset and OIOS concludes that little has changed since the Secretary-General noted (A/57/387, para. 164): "The existing systems for reporting and evaluating the performance of programmes have no practical impact on future plans and resource allocation decisions".

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[20] As also noted by the Joint Inspection Unit in JIU/REP/2006/1, para. 7.

[21] As recognized by the Secretary-General in A/54/456, para. 70.

[22] Evaluation of results-based management at UNDP, sect. 3.2.2, page 29, 2008.

3. Link to individual performance assessment

35. In personnel management practices, it is especially difficult to gauge performance in terms of contribution to outcomes. The electronic performance appraisal system (e-PAS) guidance formalizes the requirement that organizational workplans must be reviewed in conjunction with individual workplans. In practice, there is poor congruence between frameworks for programmatic results on the one hand and performance plans of individual managers on the other. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation actually preclude the sharing of information between the programme evaluation and personal performance appraisal systems (regulation 107.3 (e)).

36. Currently there are no individual-level sanctions available for the non-achievement of outcome-level results (A/60/846/Add.6, para. 39). The majority of Secretariat staff expressed the view that, when their performance is reviewed, meeting administrative requirements is considered more important than meeting programme or operational objectives (as reported in A/62/701, para. 39). Likewise, most disagree that e-PAS is used appropriately for documenting and evaluating performance. Only a very small minority of staff believe that the best candidates are usually selected for advancement. The absence of professional misconduct or wrongdoing and compliance with rules and regulations are the most easily understood benchmarks for exercise of accountability and for administration of internal justice. This emphasis is fully understandable, but runs counter to the idea of results-based management, the very heart of which is exactly that of placing emphasis on what occurs beyond procedure.

37. OIOS fully commends the articulation and recent public availability of the compacts of the Secretary-General with under-secretaries-general. Although essentially input-oriented, the initiative represents an important step of transparency and accountability. OIOS would like to note, however, that the only specific compact-related potential sanction or reward that has been flagged through available documentation is "consistent non-achievement of the targets could ultimately result in the delegated authority for recruitment and placement decisions being removed" (A/61/319, para. 7). To the knowledge of OIOS no such sanctions have ever been applied. However, more importantly in the current context, the sanction is, even if implemented, made in reference to inputs not to outcomes.

4. Evolution of parallel processes

38. Surveys and interviews suggest that many Secretariat staff find the existing formal planning, budgeting and reporting cycle to be inflexible to change. Several Secretariat entities have therefore developed separate and parallel governance arrangements for management of official development assistance (ODA) and extrabudgetary funding. In the view of OIOS, these efforts need to be understood as a rational response to results-based management limitations of the kind raised by the current report. These processes can be based on separate formulations of overarching priorities, separate sets of operational workplanning milestones, separate forums for dialogue with Member States, separate accounts and bookkeeping, separate information technology systems in support of monitoring and separate timetables and reports on the status of progress against objectives. In contrast to the project-based ODA environment, the Secretariat regular budget

resource allocation process is an enterprise of incremental adjustment to a body of expenditures that is largely fixed and recurrent (i.e., posts), thereby limiting even the potential scope to which performance information generated through results-based management can be used to inform resource decision-making.

5. Results-based management technical skills

39. OIOS finds that the notion of results-based management being an enterprise of technical proficiency was embedded in the original results-based budgeting resolution (resolution 55/231, para. 28) and reaffirmed in multiple subsequent pronouncements. OIOS finds that Secretariat staff frequently call for more results-based management resources, training and skills development. With reporting obligations being a key motivation, it was OIOS, as an extension of its previous responsibility for the programme performance report, that was called upon to support, promote and advocate results-based management. In terms of time expended on the programme performance report process, OIOS finds resources spent by the Secretariat to have been modest, albeit variable from one programme to another. Likewise, the expense of results-based management training and capacity development[23] has also been small and largely inadequate. If time and money spent on more broadly defined instruments and practices related to results-based management are considered, i.e., planning, budgeting, monitoring and evaluation at large, total resource use is more substantial.[24]

40. OIOS has no doubt that quality of reporting and evaluation will require a strengthened resource base. Simultaneously, the view of OIOS is that results-based management cannot be dealt with as an enterprise that is principally constrained by the absence of technical proficiency on the part of Secretariat staff. Nor is it a function that managers can delegate to monitoring and evaluation specialists as primary practitioners. No amount of monitoring and evaluation can compensate for goals and objectives that are unclear or for which accountability is absent. The culture of the Organization will not be transformed through such efforts on the part of Secretariat staff (an impression that is reflected in paragraph 26 of General Assembly resolution 62/236). Whatever assets are deployed to such functions, the ensuing availability of a fact, however accurate, frequent and pertinent, does not by itself lead to more rational decision-making. As experienced by members of the Organization for Economic Cooperation and Development: "A key reason for the difficult progress is that integrating performance information into public management and budgeting is not primarily a technical problem that can be left to 'experts' such as performance measurers and evaluators."[25]

6. Role of the General Assembly

41. In response to the draft of the current report, the administration stated that the proposals contained in document A/62/701 *present a practical and phased strategy for what would be the only realistic way to implement results-based management.*

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[23] The total cumulative budget allocated specifically for results-based management capacity development since 2001 was $278,282.

[24] OIOS notes the calculation, in paragraph 162 of A/57/387, that approximately $10.3 million of staff time was spent on servicing the committees during the 18 months before the final budget approval.

[25] GOV/PGC/SBO(2005)3, para. 8, OECD Working Party of Senior Budget Officials.

OIOS has reviewed the report of the Secretary-General and appreciates that it recognizes many of the shortcomings in results-based management raised in the present report. OIOS notes that the Secretary-General proposes measures that merit consideration, but observes that these lack specificity, prioritization and order of sequencing. OIOS moreover finds that the results-based management principles and actions proposed by the Secretary-General are not clearly tied to the underlying incentives, sanctions and rewards that guide decision-making at different levels of the Organization, including the intergovernmental bodies. The report of the Secretary-General (A/62/701) did not, in particular, address with sufficient clarity the role that the General Assembly needs to play in making results-based management work at the United Nations. Although OIOS agrees that the principles of "ownership", "leadership" and "culture" of results are critical to results-based management, it notes that these are not issues that can be addressed through administrative measures under the authority of the Secretary-General.

III. Conclusions

1. Orientation to outcomes

42. A challenge for the management of any public organization is to identify the maximum level of results that can be operationally planned for and in respect of which attribution and accountability can meaningfully be exercised. OIOS finds that results-based management has been implemented at the Secretariat in the narrow sense of outcomes being used to justify approval of budgets. However, organizational objectives at the outcome level are numerous, inherently vague and invariably subject to multiple influences and risk factors. Consequently, individual contributions to outcomes defy precise target-setting and impartial monitoring and actual attainment or non-attainment of results matters little to subsequent decision-making. The introduction of results-based management has not signified a paradigmatic shift away from detailed rules, regulations and controls. The Secretariat's programmatic, financial and human resource management systems are as complex and detailed as ever, and largely centred upon tracking inputs, activities and outputs.

2. Culture of compliance

43. OIOS concludes that results-based management is not an enterprise principally constrained by technical proficiency and capacity for data collection, measurement, documentation or reporting on the Secretariat side, although that matters too. The introduction of results-based management has not brought about a shift in organizational culture away from compliance with rules and regulations as the defining characteristic of behaviour. A constraint inherent to the concept of results-based management is that any formalistic approach to codifying how to achieve outcomes can stifle the innovation and flexibility required to achieve the very same outcomes. Orientation towards programmatic results will ultimately only surface as a significant trait of organizational behaviour once such results are actually made to matter. If not connected to underlying incentives, sanctions and rewards, results-based management becomes a paper-making chore. With the current report, OIOS highlights that more strict enforcement of existing rules and regulations will not be a meaningful avenue of response.

3. Progress in results-based management in the context of budget system reform

44. The core of organizational decision-making is the budget process. The most critical barriers to implementation of results-based management follow from the essential limitations placed by the General Assembly in its resolution 55/321 on results-based budgeting, the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation and the subsequent planning, budgeting and reporting instructions that were developed on that basis. The restrictions embedded in these policies makes ownership of results-based management questionable. Although results-based budgeting was recognized from the outset as being in need of implementation in a "gradual and incremental" manner (resolution 55/231, para. 6), OIOS finds that little change has been made to the original design. OIOS notes that the Secretary-General has made a number of proposals to change the planning and budgeting process (see A/58/395 and A/62/81). However, no further revision has been made to the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation since results-based budgeting was introduced, although such revisions had been made on at least two earlier occasions.

IV. Recommendations

45. OIOS concludes that there are conceptual and operational caveats to the applicability of results-based management in the Secretariat but recognizes that it will, at some level, remain an aspiration for the Organization. The recommendations below are intended as a constructive contribution to the Organization eventually making progress towards results-based management. OIOS would nevertheless like to stress the potential risk of them being dealt with in a piecemeal manner. What the Organization needs is a comprehensive "new deal" on results-based management. To that effect, OIOS offers the recommendations below.

Recommendation 1

46. With the aim of establishing clarity of ownership of and expectations for results-based management, OIOS recommends that the Secretary-General propose to the General Assembly an overarching policy and terminological framework to circumscribe the extent and limitations of results-based management in the Secretariat. In the event that the Assembly wishes to renew its commitment to results-based management, OIOS recommends that the proposal from the Secretary-General include an internal control framework that establishes direct links between levels of results (with particular reference to the distinction between outputs and outcomes) and layers of authority and accountability (between Member States, the Secretary-General, Secretariat managers and staff), together with criteria for how results planned and results actually achieved will inform different stages of decision-making. The proposed framework should, moreover, be applicable to Secretariat regular budget resources as well as the extrabudgetary arena (paras. 13-15, 33, 34 and 41-44 above).

47. *The Secretary-General agrees with the overall thrust of OIOS's recommendation but cautions that the implementation of the details of these new approaches must be gradual, allowing for constructive dialogue on the needed*

changes and taking into consideration the limitations and special circumstances of the Organization.

Recommendation 2

48. To ascertain that the framework of rules and regulations pertaining to planning, budgeting monitoring and the performance review process better serve the strategic planning and management needs of the Organization, OIOS recommends that the Secretary-General initiate a comprehensive review and reformulation of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, which were last revised in 2000. The review should address the instruments, structure, timetable and roles and responsibilities of all parties to the resource planning and decision-making process of the Secretariat (paras. 15, 16, 21-24, 33, 34 and 44 above).

49. *The Secretary-General agrees with this recommendation.*

Recommendation 3

50. In response to its observation concerning fragmentation in results-related reporting, OIOS recommends that the Secretary-General request the Assembly to mandate a single performance report combining programmatic and financial information in a manner that consolidates rather than adds to his total reporting obligations (paras. 26-28, and 32 above).

51. *The Secretary-General agrees that there is a need to combine programmatic and financial information to allow for more efficient and comparative analysis of performance. While the pilot "United Nations Secretariat Consolidated Reports" for 2005 and 2006 were proposed as templates for more results-oriented reporting without immediately replacing any existing reporting requirements, the General Assembly did not take a position on their continuation. The Department of Management expects to review the format and content of the programme performance report, for which it now has responsibility, with a view to possibly including financial information.*

Recommendation 4

52. In order to ascertain the possibility of alignment between programmatic, financial and personnel planning and results data, OIOS recommends that the Secretary-General integrate programmatic results frameworks into the first wave of the enterprise resource planning system and broader information and communications strategy of the Organization (paras. 27 and 28 above).

53. *The Secretary-General states that the results-based management module is scheduled for full implementation during wave 2 of the enterprise resource planning, but that "certain key elements" will be included in wave 1.*

Recommendation 5

54. Because they are the level of performance for which managers can most transparently be held accountable and thus form a necessary part of organizational performance management (if not results-based management results at the outcome level), OIOS recommends that the Secretary-General initiate a comprehensive

review and revision of the current categorization of outputs, as reflected in budgeting and reporting requirements, with particular reference to meaningful capture of outputs outside the traditional Secretariat arena, for example outputs pertaining to field-based peacekeeping, humanitarian and development work (paras. 25, 29 and 42).

55. *The Secretary-General notes that his report contained in document A/62/701 proposes a review of the current output methodology.*

Recommendation 6

56. In order to strengthen the technical and methodological capacities of the Organization, OIOS recommends that the Secretary-General: (a) prepare and submit for the consideration of the General Assembly a request for additional resource requirements that comprehensively addresses the respective requirements of: (i) central results-based management coordination; (ii) department-level results planning and self-evaluation; and (iii) independent inspection and evaluation; and (b) promulgates the United Nations Evaluation Group norms and standards as the overarching framework of organizational evaluation practice (paras. 39-41 and 43).

57. *The Secretary-General notes that his report contained in document A/62/701/Add.1 proposes resources for establishment within the Department of Management of a division for accountability and results management and that additional resources would be considered in the context of the proposed programme budget for the biennium 2010-2011. OIOS notes that this action corresponds to recommendation 6, item (a)(i) above.*

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Review of the efficiency of the administrative and financial functioning of the United Nations

Report on the activities of the Office of Internal Oversight Services

Review of results-based management at the United Nations

Report of the Office of Internal Oversight Services

"Results-based management at the United Nations has been an administrative chore of little value to accountability and decision-making"

Summary

Results-based management involves focusing on what occurs beyond the process of translating inputs into outputs, namely outcomes (or "expected accomplishments") to which it seeks to bring accountability. An inherent constraint of results-based management is that a formalistic approach to codifying how to achieve outcomes can stifle the innovation and flexibility required to achieve those outcomes.

The Office of Internal Oversight Services (OIOS) finds that the introduction of results-based management in the Secretariat has been dealt with as an addition to the myriad rules and procedural requirements that govern inputs, activities, monitoring and reporting. It has not been accompanied by any relaxation of the volume, scope or detail of regulatory frameworks pertaining to financial, programmatic and human resource management. For each of these, there are separate and incompatible systems, rules and regulations.

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OIOS finds that the shortcomings of results-based management go back to the original design, as reflected in General Assembly resolution 55/231 on results-based budgeting. As a first step towards results-based management, this resolution was inadequate because it:

(a) Barred the use of indicators of achievement for adjustment of resources;

(b) Reiterated limitations on the authority of the Secretary-General to shift resources between post and non-post budget lines.

Moreover, OIOS finds that:

(a) The Secretariat statements of results that are based on General Assembly resolutions are often vague and the determination of success does not lend itself to impartial, transparent and precise measurement. Outcomes are invariably influenced by multiple actors and external risk factors outside United Nations control;

(b) Many of the results planned for have been expressed in a self-serving manner, lack credible methods for verification and involve reporting that rests upon subjective judgement. Performance measures frequently lack baselines and targets and many are not regularly tracked;

(c) OIOS also notes that "expected accomplishments" largely relate to individual sections or divisions, with no target-setting or measurement for objectives that transcend divisions or departments or seek to capture longer-term objectives of the United Nations as a whole. Results-based management has thus not contributed to higher order policy prioritization or to laying the ground for strategic debate.

OIOS concludes that although aspirational results are utilized to justify approval of budgets, the actual attainment or non-attainment of results is of no discernable consequence to subsequent resource allocation or other decision-making. Financial and programmatic records do not compare. Reporting on results does not feed into the budgeting calendar. The metrics do not exist to systematically determine efficiency and effectiveness of the organization. OIOS also finds that the exercise of accountability is not cast from review of outcomes but from ascertaining that there is no negligence, misconduct or breach of rules and regulations.

Also, the rules and regulations for programme planning, budgeting, monitoring and evaluation have blurred the distinction between the separate roles of evaluation as opposed to monitoring and of independent evaluation as opposed to self-evaluation.

Results-based management is ultimately not within the powers of the Secretary-General to implement within his restricted administrative authority. It is not a technical skills challenge. The "culture" of the Organization will not be changed by data collection efforts of "practitioners" within the Secretariat. If results actually produced do not guide General Assembly decision-making and if simultaneously there is no relaxation of process controls, results-based management will continue to be an administrative chore of no real utility.

In spite of the shortcomings raised, OIOS recognizes that results-based management is, at some level, likely to remain an aspiration for the Organization. In this spirit, OIOS offers six recommendations:

1. Establishment of a policy framework to outline the eventual extent and limitations of results-based management at the United Nations Secretariat, to be accompanied by an internal control framework that addresses delegation of authority and the criteria of decision-making to be informed by results-based management.

2. Initiation of a review and revision to the rules and regulations pertaining to programme planning, budgeting, monitoring and evaluation.

3. Consolidation of the reporting obligations of the Secretary-General to the General Assembly.

4. Integration of programmatic results frameworks within the first phase of the enterprise resource planning strategy of the Organization.

5. Update and revise the range of output categories subject to planning and monitoring.

6. Strengthen the technical and methodological capacities of the Organization.

OIOS selected the topic of results-based management on the basis of previous audits, inspections and evaluations, having identified it as a Secretariat-wide vulnerability. OIOS also noted that the Assembly had endorsed a results-based management benchmarking framework developed by the Joint Inspection Unit. The present report is based on a review of practices in individual Secretariat entities, combined with a desk review of General Assembly resolutions relevant to results-based management, Secretariat reporting and evaluations of results-based management in other international organizations.

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I. Introduction

A. Results-based management: definitions, mandate and instruments

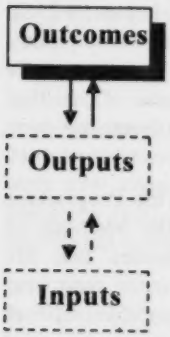
1. The Office of Internal Oversight Services (OIOS) Glossary of Monitoring and Evaluation Terms[1] defines results-based management as:

> "A management strategy by which the Secretariat ensures that its processes, outputs and services contribute to the achievement of clearly stated expected accomplishments and objectives. It is focused on achieving results and improving performance, integrating lessons learned into management decisions and monitoring of and reporting on performance."

2. Results-based budgeting, however, is defined as a:

> "programme budget process in which (a) programme formulation revolves around a set of predefined objectives and expected results, (b) expected results justify the resource requirements which are derived from and linked to outputs required to achieve such results and (c) in which actual performance in achieving results is measured by objective performance indicators".[2]

Figure I
Results-based management is about what occurs beyond outputs



3. In their most essential form, both results-based budgeting and results-based management build upon assumption of a logical hierarchy or chain of cause-and-effect relationships from inputs through outputs to outcomes (and eventually beyond to "impact" as a separate category of ultimate, longer-term effects). Both results-based budgeting and results-based management involve an intention to bring focus to outcomes. Results-based budgeting brings particular emphasis to outcomes in conjunction with consideration of budgets and results-based management shifts the focus of attention to such results throughout the cycle of planning, budgeting, work implementation, monitoring and evaluation. With its focus on outcomes, results-based management involves a paradigmatic shift away from a culture of compliance with rules and regulations pertaining to processes and activities as

[1] Office of Internal Oversight Services, Glossary of Monitoring and Evaluation Terms, available at http://www.un.org/Depts/oios/mecd/mecd_glossary/index.htm.

[2] United Nations guide to results-based budgeting, available at http://ppbd.un.org/pdf/Rbbguide.pdf, annex 1.

embodying the highest virtue of public service. With outcomes thus being the principal entry point to performance reporting and assessment, the presumptive corollary is a lesser burden of procedural requirement, albeit without thereby compromising standards of professional conduct. From an evaluative perspective, a critical distinction between outputs and outcomes is that efficiency is associated with the production of outputs, while effectiveness is associated with attainment of outcomes.

4. The legislative basis of the planning and budgeting process of the United Nations Secretariat[3] is:

(a) General Assembly resolution 41/213, which stipulates the roles of the Assembly and its subsidiary bodies in reviewing the budget;

(b) The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8), which spell out the cycle, structure and periodicity of the budget, together with responsibilities for planning, monitoring and reporting.

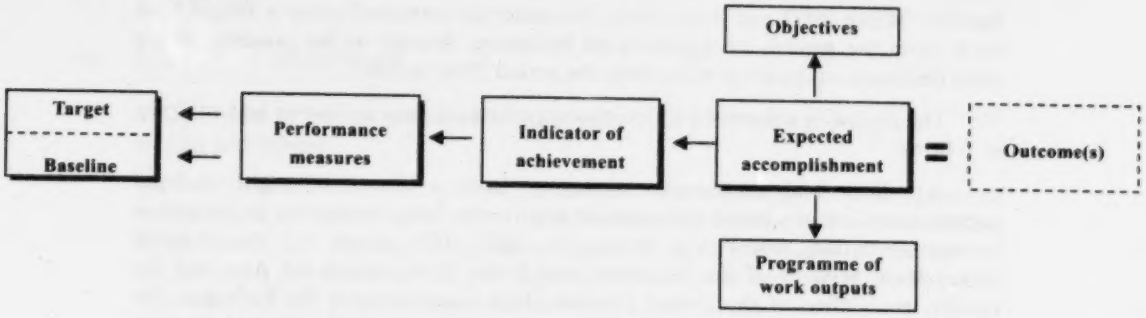
5. In 2001, the General Assembly decided, by its resolution 55/231, to introduce results-based budgeting on condition of compliance with the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, the applicability of which have since been reaffirmed (see, for example, Assembly resolution 56/253). With resolutions 57/290 B and 59/296, results-based budgeting was subsequently also mandated in respect of peacekeeping budgets. Resolution 55/231 followed the goal expressed by the Secretary-General in his 1997 reform programme, of "shifting the focus of planning, budgeting, reporting and oversight from how things are done to what is accomplished" (see A/51/950, para. 240).

6. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation are also the foundation for instructions and guidelines that are periodically issued in support of planning, budgeting and performance reporting. Since the budget for the biennium 2002-2003, planning starts with entities articulating a strategic framework to implement applicable intergovernmental mandates. This framework is centred on subprogrammes (usually based on an organizational division), in reference to which there are overarching objectives and "expected accomplishments" corresponding to more specific outcomes to which the division concerned intends to contribute within a given biennium. Expected accomplishments are thus the key level or "unit of account" for results-based planning, budgeting and management at the United Nations. The expected accomplishments are accompanied by "indicators of achievement". At the budget preparation stage, "performance measures" that capture the anticipated degree of change in the indicator of achievement (i.e., from baseline to target) and a schedule of outputs is added. The process is also described in the proposed strategic framework for the period 2008-2009 (A/61/6/(Part one)).

[3] Comprising all entities that draw resources from the regular budget of the United Nations.

Figure II

Corresponding to outcomes. United Nations "accomplishments" are defined with several subcomponents



7. Lastly, the requirements of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation also prescribe the scope, form and content of the Integrated Monitoring and Documentation Information System (IMDIS), the information technology system used to support programme planning and performance reporting. IMDIS also serves as a vehicle for compiling the biennial programme performance report of the Secretary-General, which thus completes each cycle of results planning and management. For the biennium 2008-2009, the United Nations Secretariat, including the Department of Peacekeeping Operations but not individual peacekeeping missions, has 674 separate expected accomplishments, for which there are 1,119 indicators of achievement, for the 214 subprogrammes of the 32 main budget sections of the Secretariat, compared with 494 expected accomplishments and 679 indicators of achievement in the biennium 2002-2003. OIOS notes that, among the expected accomplishments of the Secretariat there is no particular order of priority.

B. Review objectives and methodology

8. Within the mandate of OIOS (see General Assembly resolution 48/218 B), the review of results-based management was selected on the basis of previous audits, inspections and evaluations having identified the use of results-based management as a Secretariat-wide vulnerability. OIOS also notes that the Assembly has endorsed a results-based management benchmarking framework developed by the Joint Inspection Unit (see Assembly resolution 60/257 and the report of the Committee for Programme and Coordination (A/60/16 and Corr.1, para. 248)) and recommended its use as a tool for the oversight bodies; that framework has thus served to inform the current review. OIOS also notes that the Steering Committee on the Comprehensive Review of Governance and Oversight within the United Nations and its Funds, Programmes and Specialized Agencies made the comprehensive implementation of results-based management the first of its recommendations on governance (see vol. III of the report of the Committee contained in document A/60/883/Add.1).

9. The present review has as its overall objective an assessment of the efficiency, effectiveness and relevance of the overall framework of results-based management in the United Nations Secretariat, in order to thereby inform the deliberations of Member States on future policies for the Organization. The review was undertaken between March 2007 and June 2008. The materials reviewed cover a longer time span, from the genesis of results-based budgeting through to the present, with a main emphasis on documentation from the period 2004 to 2007.

10. The review is informed by five major methods of data collection and analysis, as follows:

(a) Data and conclusions emerging from a series of eight in-depth inspections of results-based management and results-based budgeting in individual Secretariat entities undertaken during the 2007-2008 period: (i) results-based management reviews of the Economic and Social Commission for Asia and the Pacific, the Office of the United Nations High Commissioner for Refugees, the Office for the Coordination of Humanitarian Affairs and the United Nations Environment Programme[4] and (ii) results-based budgeting reviews of the United Nations Interim Administration Mission in Kosovo, the United Nations Mission in Liberia, the United Nations Mission in the Sudan and the United Nations Integrated Mission in Timor-Leste.[5] These involved an estimated total of 643 individual interviews, 104 focus group meetings and a combined total of 1,106 survey respondents (estimated response rate 15.7 per cent);

(b) Recent OIOS thematic reviews of relevance to results-based management, such as on the use of client satisfaction data and web metrics as performance measures,[6] evaluation capacities and needs[7] and compliance with programme performance reporting requirements;[8]

(c) Desk review of the various resolutions, reports, systems and guidelines issued by the General Assembly, the Secretary-General and programme managers that address, directly or indirectly, results-based management in the United Nations Secretariat;

(d) A review of the database of United Nations Secretariat results frameworks as recorded in IMDIS;

(e) A desk review of evaluative evidence pertaining to implementation of results-based management in other multilateral organizations and in national public administrations.

11. There are no internationally agreed upon standards that define what should be included within a results-based management system. The review by OIOS was guided by a series of analytical questions subsumed under four broad headings: (a) clarity of objectives; (b) performance measures; (c) practice of monitoring and evaluation; and (d) the utility for decision-making of results-based management information.

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[4] OIOS report INS-07-003, INS-07-005, INS-07-006 and IED-08-005, respectively.

[5] OIOS report INS-07-001, INS-07-002, INS-07-004 and INS-08-001, respectively. Peacekeeping results-based budgeting reports have also been synthesized into report INS-08-02.

[6] OIOS report IED-2006-005.

[7] OIOS report IED-2006-006.

[8] See OIOS reports INS-COM-08-001 (Compliance with programme performance documentation at end of 2006-2007 biennium) and INS-COM-07-002 (IMDIS 18-month reporting status).

12. The draft of the present report was shared with management and the comments of the Secretary-General are reflected in the report.

II. Findings

A. Clarity of objectives

The purpose of the results-based management enterprise has not been clearly articulated

13. OIOS notes that there is no clear common understanding of the objectives of results-based management at the United Nations Secretariat. General Assembly resolution 55/231 provides a legislative mandate for results-based budgeting, not results-based management. For the larger enterprise of results-based management, the Assembly has given its endorsement by extension through resolution 60/257 by which it adopted the Joint Inspection Unit results-based management benchmarking framework that had been presented to and recommended by the Committee for Programme and Coordination. Building on the Joint Inspection Unit framework, the United Nations System Chief Executives Board for Coordination (CEB) has likewise adopted results-based management as a tool of reform and has proceeded to host a "community of practice" (see CEB/2005/HLCM/R.6, para. 48). Moreover, further to Assembly resolution 61/245, the Secretary-General has presented to the Assembly a review of results-based management in the context of accountability, risk management and internal control (A/62/701). *In commenting on the draft of the current report, the Deputy Secretary-General stated that the Secretariat has been implementing results-based budgeting not results-based management and that although these terms are related and often used interchangeably, they are in fact two different management concepts.*

14. The review of OIOS is guided by the understanding that introduction of results-based budgeting in the Secretariat was intended as a step towards results-based management.[9] However, OIOS finds that neither Assembly resolution 60/257 nor any other Assembly resolution explicitly defines what results-based management is meant to do for the Organization. OIOS finds a range of views, from those who see it narrowly either as a presentational tool convenient for fund-raising (CEB/2007/HLCM-HLPC/XIII/2, para. 9) or as a compliance-reporting mechanism, through to those who see results-based management as aimed at changing the internal organizational "culture" or being aimed at facilitating more fundamental reform of how the United Nations functions (E/2007/69, para. 69) at the level of strategic prioritization.

15. As noted by the Joint Inspection Unit, in the Secretariat the term results-based management is, in practice, often used interchangeably (JIU/REP/2006/6, para. 31) with results-based budgeting. In this regard, OIOS notes that the original guidelines on results-based budgeting[10] state that "RBB is not just about budgets, but has the potential to bring about a change in strategic management, accountability and responsibilities". The objectives of results-based management have been more explicitly expressed within the United Nations Development Group with which a

[9] OIOS also notes that General Assembly resolution 55/231 refers to "gradual implementation".

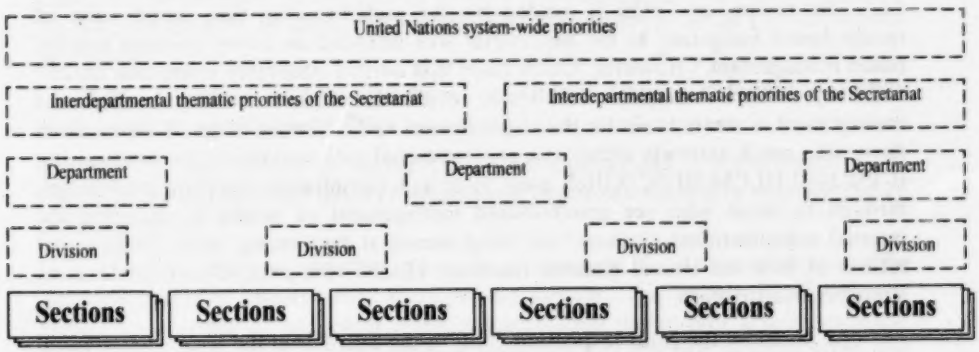
[10] Available at http://ppbd.un.org/pdf/Rbbguide.pdf.

number of United Nations Secretariat entities are affiliated[11] and for which a body of definitions, policy and guidance materials have been agreed.[12]

Expected accomplishments are not necessarily the highest priority of the Organization

16. OIOS notes that expected accomplishments are the sole level of results formulation matched by indicators or measurable performance targets. The expected accomplishments actually usually correspond to the work of individual sections. Similar formulation of results, with associated indicators and performance targets, is not done at the level of division, department or budget section, or for the United Nations as a whole. The results-based management framework does not therefore bring any degree of measurability or evidence-gathering to the strategic debate and decision-making pertaining to higher order organizational priorities. United Nations staff frequently express frustration with the absence of a clear framework for overarching Secretariat leadership and coordination. At the same time, they recognize that results-based management needs to be adapted to the multiplicity of operating environments at the United Nations. OIOS observes, and is supported by survey findings and personal testimony from virtually all stakeholders in the United Nations Secretariat programmes reviewed, that the planning and budgeting process does not facilitate an appropriate level of strategic debate and decision-making. The budget process is predominantly focused on scrutiny of posts and other inputs, with no clear reference to strategic priorities or past contributions to outcome-level results.

Figure III
Expected accomplishments are low in the hierarchy of strategic issues faced by the United Nations



[11] Office of the High Commissioner for Human Rights, United Nations Human Settlements Programme, United Nations Office on Drugs and Crime, Department of Economic and Social Affairs, United Nations Conference on Trade and Development, Department of Public Information, Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, United Nations Environment Programme, Office of the United Nations High Commissioner for Refugees, Office for the Coordination of Humanitarian Assistance.

[12] See, for example, http://www.undg.org/archive_docs/2485-Results-Based_Management_Terminology_-_Final_version.doc.

The more results-oriented the objectives, the more difficult the determination of attribution and accountability

17. Whereas results-based management involves the intention of expanding accountability from process alone to also comprise attainment of results, the dilemma is that there is a corresponding loss of precision in the level of control. With multiple actors and factors exerting an influence upon outcomes, the degree of uncertainty, risk and external influence expands, while the possibility of attributing change to its individual component diminishes. In fact, the more outcome- or impact-oriented that chosen operational objectives are, the more difficult it becomes to codify practice into rules and regulations. The more one tries to proceduralize attainment of results, the more likely it becomes that the innovation and flexibility required to attain results is undermined.

18. Interviews with United Nations Secretariat managers and staff show that there is a high awareness of the attribution problems of results-based management. Staff are fully aware of how their authority is limited, how results often depend on actions that are outside their own control and, in particular, what they cannot reasonably be held responsible for. Managers thus are most comfortable with result statements that correspond to what they are able to control. Inputs, activities and outputs are possible to keep track of and accountability is not subject to dispute. OIOS notes that the degree of precision to which possible attribution and accountability can be defined flows from the original guidance materials using the definition: "Accomplishments are the direct consequence or effect of the generation of outputs and lead to the fulfilment of a certain objective".[2] This can be interpreted in a manner that trivializes the cause and effect relationships that are at play. The fact that outputs ought to significantly affect expected accomplishments does not necessarily mean that they do.

B. Performance measurement

By the time expected accomplishments are measured, many are no longer outcomes

19. Based on its inspection of individual entities as well as its review of results frameworks in the Secretariat as recorded in IMDIS, OIOS found that the degree of results-orientation reflected in the expected accomplishments varies greatly. Although some expected accomplishments do reflect change at the level of outcomes, there are also many expected accomplishments and associated indicators of achievement that have been formulated at the level of activities and outputs, typically the number of meetings organized or website visitors, the volume of documents disseminated, the number of Member States attending meetings or participating in projects and citations of the work of a particular section. For some programmes reviewed in depth by OIOS, the bulk of expected accomplishments are formulated in such terms. At the same time, OIOS identified instances of a logical disconnect between the expected accomplishments on the one hand and the indicators on the other, that is, that they are two separate substantive phenomena.

20. For example, while an expected accomplishment might be framed as "effective implementation of outcomes of global conferences", the indicator may be framed not in terms of outcome itself but by degree of satisfaction expressed by participants at a particular meeting backstopped by the division in question. In some other cases,

measurement boils down to the number of participants in events for which the United Nations provides travel costs and per diem. In other cases, the performance measures speak to manpower resources or volume of funding that has been raised by the division or section in question.

Measurements are not necessarily objective or precise

21. In several of the results-based management inspections undertaken by OIOS, it was found that the majority of indicators did not satisfy the "SMART" criteria (specific, measurable, attainable, relevant and time-bound) meaning, in short, they were either a poor substantive reflection of the intended expected accomplishment or that they were not actually possible to track in practice. In many cases, their observation was fundamentally dependent upon the subjective judgement of the programme managers in question, for example, where indicators revolve around "critical initiatives" of a given division or "key actions" on the part of Member States. In many cases programmatic results data rest on anecdotal evidence with a poor methodological basis or are absent altogether. An illustration is provided by the case of client benefits, notionally the key entry point for expected accomplishments as defined in the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (rule 105.4 (a) (iii)): "... those benefits or changes expected to accrue to users or beneficiaries ...". In a review of practices in 22 Secretariat departments,[13] OIOS found the definition of clients to be inconsistent and the determination of benefits or satisfaction frequently to be based on methodologies that lacked rigour. OIOS found a number of instances of surveys administered by selecting an activity or an output that is generally considered a success and thus not typical of the full range of services needed to make progress towards an expected accomplishment. Along the same lines, there were several cases of satisfaction ratings being derived from unbalanced scales, whereby the number or labelling of response options are tilted towards yielding favourable ratings. OIOS also noted that practices for maintaining respondent anonymity vary.

What gets measured is all that gets done

22. Another area of results-based management practice that involves indicators that inherently defy the idea of results-orientation is the standardized formulations pertaining to executive direction and management, as prescribed by the budget instructions. All pre-defined indicators are expressed in terms of administrative or bureaucratic milestones that do not necessarily connect with the much more substantive expected accomplishments. For both the 2004-2005 and the 2006-2007 bienniums, budget instructions[14] specified "Programme of work is effectively managed and supported by staff and financial resources" as a standardized expected accomplishment with the associated indicators stipulated as "Timely delivery of outputs and services", "Timely recruitment and placement of staff" and "Full utilization of resources". However, what is thereby subjected to measurement, i.e., timeliness and expense, are certainly not outcomes in the results-based management sense. Meanwhile, the notion of effectiveness is trivialized by its association with activity and process instead of attainment of outcomes.

[13] OIOS report IED-2006-005.

[14] Para. 31, annex 6, of http://ppbd.un.org/bi04/Instructions.doc and para. 52, annex 5, of http://ppbd.un.org/Bi06/.

23. On the other hand, OIOS found results frameworks for which the intergovernmental bodies had specified indicators of achievement corresponding to outcomes that are undoubtedly desirable, but for which respective entities should be held responsible. A case in point is OIOS's own results framework, for which, in response to General Assembly expectations, indicators have been defined in terms of the degree to which oversight recommendations have been implemented. OIOS notes the ensuing perverse underlying incentive: namely, to concentrate on recommendations that are easy to implement.

Performance-measure baselines and targets may be disconnected or missing altogether

24. OIOS found[15] that in respect of a quarter of the 974 indicators specified for the biennium 2004-2005 no observations were ever recorded. Among those for which observations were made, a high proportion required a significant degree of subjective assessment. An issue separate from the choice of indicator as such is that of target-setting. Strategic planning guidance and budget instruction materials offer no precision as to how managers should set their ambitions: between what they are more or less certain to achieve on the one hand and imaginary "stretch" goals on the other. There are several instances of indicators of achievement being disconnected from performance measures. An illustrative disconnect between expected accomplishment, indicator of achievement and performance measure is the case of "national capacities for ... strengthened" (as the expected accomplishment) being verified by the indicator of achievement "number of countries implementing (e.g., legislation) ..." and the performance measure being "number of delegations attending ...". Elsewhere performance measures have been given no baseline and no target at the time of budget approval. Because there is no requirement that resource allocation be disciplined through ex ante vetting of the realism behind stated results ambitions, programme managers are able, in effect, to set their own performance targets once the biennium is under way. That is possible by retroactively setting baselines which were "to be estimated" at time of budget approval, by substituting one measure for another or by introducing altogether new items of measurement.

Performance assessment is ultimately tied to inputs and outputs

25. In respect of both General Assembly deliberations and internal management, the notions of performance measurement and assessment remain predominantly geared towards scrutiny of inputs, activities and outputs rather than outcome-level results. This applies across the programmatic, financial and personnel management realms. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (Regulation 6.1 and Rule 106.1) stipulate that programmatic accomplishments should be measured by delivery of scheduled outputs. Assembly resolution 55/231 prescribes that requested resources should be justified in terms of the requirements of output delivery. The budget performance reports track expenditure versus line-item appropriation. Also, it is the rate of output implementation, and in particular the conformity of actual output delivery with a legislatively mandated programme of work, that remains the aspect of programme performance assessment upon which the Assembly puts the greatest emphasis.[16] For

[15] OIOS report IED-2006-006.

[16] As evidenced by time devoted by the Committee for Programme and Coordination to review of the programme performance report.

the biennium 2008-2009, more than 44.000 individual outputs have thus been mandated. On the part of Secretariat staff, a frequently cited connotation of results-based management is that it should free them from detailed and burdensome regulatory detail, as long as they adhere to appropriate standards of professional conduct. However, OIOS finds that the introduction of results-based management has not been accompanied by any discernable relaxation of the scope, detail or overall burden of effort associated with the body of rules and regulations that aim to control and guide what managers and staff may and may not do.

C. Practice of monitoring and evaluation

Monitoring and reporting is fragmented along multiple tracks

26. Secretariat monitoring practices are based on separate procedures, systems and reporting tracks pertaining respectively to financial, programmatic and staff planning processes. Each of the three tracks has different notions of success and performance, which cannot readily be reconciled or compared. Budget performance is reported in terms of expenditure per budget line, while the programme performance report presents outputs by subprogrammes. Individual workplans follow generic descriptions of activity rather than the substantive results frameworks that give rationale to the budgets of their respective organizational units. OIOS recognizes that different organizational functions require different types and detail of information but also understands results-based management as being aimed at enabling stakeholders to obtain an overall view of the work and performance of the Organization. The Secretary-General has acknowledged that improved alignment of budgetary data with output records will be needed to promote progress towards results-based management (A/61/826, para. 15) and OIOS concurs with his view that: "the separation of programmatic and financial planning and reporting directly contributes to the governance problems of the organization, impeding determination of effectiveness and strategic consideration of substantive issues" (A/60/733, para. 20).

Table
Separate tracks of performance planning and reporting

	Financial	*Programmatic*	*Personnel*
Procedures	ST/SGB/2003/7	ST/SGB/2000/8	ST/SGB/2007/4 and ST/SGB/2007/3
Information technology system	Integrated Management Information System (IMIS)	Integrated Monitoring and Documentation Information System (IMDIS)	Electronic performance assessment system (e-PAS)
Reviews	(First and second) budget performance report (A/61/593 and A/62/575)	Programme performance report (A/63/70)	Annual performance appraisal

27. OIOS notes that there have been a number of General Assembly resolutions in support of report consolidation (for example, resolutions 57/300, para. 20, 58/316, annex, para. 6, and 59/313, para. 16), but that the proposed template for consolidated annual reports did not meet with the approval of Member States (see A/62/352 and A/62/164). OIOS believes it to be essential that performance-related reporting from the Secretary-General be consolidated from its current multiple, fragmented tracks and proposes that the assumption that such reporting would need to be complementary to existing reports be revisited (see resolution 60/283, sect. V, para. 5). This is not to the detriment of future results-based management systems and practices being tailored to the unique circumstances of particular subsectors and individual entities.

28. OIOS notes with concern that integration of programmatic performance information has not been clearly identified as a necessary component of what needs to be integrated within the planned enterprise resource planning system (see A/62/510) that is being developed as part of the Secretariat's information, communications and technology strategy (see A/62/793). OIOS stresses that if the enterprise resource planning strategy is to enable the Organization to deliver on the rationale given, namely that "the absence of an integrated information system for managing resources is seriously hampering the ability of the United Nations to deliver results effectively and efficiently" (see A/62/510, summary), programme results frameworks need to be an integral component.

Data comparability within or among programmes is at best limited to output level

29. From a results-based management perspective, outputs matter only insofar as they contribute to outcomes. Outputs are, however, the maximum level at which some degree of data aggregation and comparability is available. OIOS notes IMDIS records showing that the total number of outputs produced by the Secretariat declined from 51,333 during the biennium 2002-2003 to 45,714 during the biennium 2006-2007. The standard output categories currently monitored are substantive servicing of meetings, parliamentary documentation; expert groups, rapporteurs, depository services; recurrent publications; non-recurrent publications; other substantive activities; advisory services; training courses, seminars and workshops; fellowships and grants; field projects; conference services; administration; and oversight. OIOS notes that the categories primarily reflect the work of the United Nations in the 1970s or before and do not capture the diversity of work associated with the much-expanded operational field activities of the United Nations in the development, peacekeeping and humanitarian assistance arenas. OIOS thus recommends that the typology of Secretariat outputs be comprehensively revised.

Too few evaluations are conducted to regularly inform decision-making

30. OIOS notes the multiple calls that have been made for strengthening of evaluation in the Secretariat (for example, General Assembly resolutions 37/234, 48/218 B, 53/207, 58/269, 59/275 and 60/257). Further, according to the OIOS assessment of evaluation capacities and needs at the Secretariat,[17] overall evaluation capacity at the central, programme and subprogramme levels is inadequate. This is because of insufficient financial and staffing resources, uneven competencies and lack of support from senior leadership. Budgets for evaluation continue to be low,

[17] OIOS report INS-07-002.

despite showing some improvement. By three measures (dedicated evaluation function, evaluation policies and evaluation coverage) capacity has been growing. In the proposed programme budget for the biennium 2008-2009, programme managers estimate that about $44.5 million are to be dedicated to the conduct of monitoring and evaluation activities, representing an increase of 78 per cent compared with the biennium 2006-2007. However, even with these increases, resources dedicated to evaluation are still below the capacity benchmark of between 1 and 3 per cent of total programme costs being earmarked for evaluation activities suggested by the Joint Inspection Unit report on oversight lacunae in the United Nations system (JIU/REP/2006/2). The body of available evaluative evidence on outcomes remains limited in scope, depth, rigour and regularity (A/60/733, paras. 35 and 39).

31. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation give legitimacy to the generic role of the evaluation function, especially that "all programmes shall be evaluated on a regular, periodic basis" (rule 107.2). However, it also brings ambiguity to roles and responsibilities, in particular with regard to evaluation versus periodic programme performance monitoring, assessment and reporting. Also, it does not clearly distinguish between the complementary nature and roles of self-evaluation (i.e., as undertaken under the auspices of respective programme managers) as opposed to independent evaluation (as undertaken by oversight bodies that are not directed by the managers of the programmes in question). Meanwhile, OIOS notes that the link between evaluation and planning and budgeting (see General Assembly resolution 61/235, para. 17) remains a major challenge.

D. Decision-making utility

Programme results reporting is done in order to comply rather than because it is useful to programme managers

32. Through observations from its previously close involvement with the programme performance report, but also confirmed through interviews and focus group studies, the view of OIOS is that reporting of programmatic results by client departments is largely motivated by a desire to comply with instructions rather than perceived utility for their own purposes. IMDIS is, in particular, perceived as being of little practical utility to programme managers and their operational decision-making. Although practice is variable, the overall trend is for IMDIS to get populated with performance data only once deadlines given from United Nations Headquarters draw to a close. As the biennium 2006-2007 came to an end, only 4 out of 34 budget sections had updated IMDIS with rudimentary data for all the planned periodic observations on indicators of achievement.[18] By the end of the biennium 2004-2005, data collection had not been done in respect of 44 per cent of planned observations against indicators of achievement,[19] and only one department collected data on all its planned observation points. Shortly before final deadlines loom however, the observance of reporting requirements rapidly increases. Among peacekeeping missions too, it is apparent that results frameworks in the context of results-based budgeting have not acquired significant operational decision-making

[18] OIOS report INS-COM-08-001.

[19] Sample of 24 departments, see OIOS report IED-2006-006, para. 36.

utility beyond nominally giving justice to budget approval.[20] OIOS thus fully concurs with the Secretary-General (A/62/701, para. 64) that: "the planning, budgeting, monitoring and evaluation activities, including the reporting on achievement of results, have been viewed more as a compliance matter rather than as a management tool for understanding what has worked well and why".

The General Assembly has expressly barred programme results from influencing the allocation of resources

33. The review of OIOS of results-based management, both at the level of individual entities and in the desk review of documentation from the deliberations of intergovernmental bodies, finds that the achievement or non-achievement of programme objectives ultimately has few consequences for resource allocation, work planning or assessment of managerial performance (A/60/692, para. 74). Decisions are made on the basis of other, not easily identifiable, criteria. In the peacekeeping arena, results-based budgeting frameworks have a different life altogether from the mission implementation plans, which are the real plans that guide mission management. A fundamental condition of associating results-based budgeting with accountability, namely that a priori formulation and ex post facto assessment is accompanied by clarity about how information is utilized, does not exist.[21] These findings mirror that of a recent evaluation of results-based management at the United Nations Development Programme that: "Adjusting work in response to results is the cornerstone of an effective results-based management system. This study has failed to find any convincing evidence that suggests that results are influencing management".[22]

34. OIOS finds that a critical limitation of the original resolution on results-based budgeting (resolution 55/231) to be its proviso that indicators of achievement should "not constitute a method by which to adjust the level of approved resources" and that "requested resources should continue to be justified in terms of the requirements of output delivery" . The resolution also reiterated that any transfers between post and non-post resources would continue to require prior approval of the Assembly. OIOS believes that resource allocation decisions should not, in any circumstances, be mechanically tied to past performance. However, the above proviso seems contrary to the idea of results-based management itself. As noted by the Steering Committee on the Comprehensive Review of Governance and Oversight, discussions and decision-making on budgets and administrative issues typically revolve around detailed issues relating to posts and other expenditure items rather than strategic requirements (see vol. III, para. 18, of the report of the Committee contained in document A/60/883/Add.1). Accordingly, the budget and expenditure management system, (IMIS), is line-item based and does not allow for aggregation or comparison of costs to the accomplishment level. OIOS also notes that the budget cycle is such that, when the programme performance report in respect of one biennium gets tabled, the Assembly has already concluded its deliberations on the budget for the next. This disconnect has been known from the outset and OIOS concludes that little has changed since the Secretary-General noted (A/57/387, para. 164): "The existing systems for reporting and evaluating the

[20] As also noted by the Joint Inspection Unit in JIU/REP/2006/1, para. 7.

[21] As recognized by the Secretary-General in A/54/456, para. 70.

[22] Evaluation of results-based management at UNDP, sect. 3.2.2, page 29, 2008.

performance of programmes have no practical impact on future plans and resource allocation decisions".

There is no direct link to individual performance assessment

35. In personnel management practices, it is especially difficult to gauge performance in terms of contribution to outcomes. The electronic performance appraisal system (e-PAS) guidance formalizes the requirement that organizational workplans must be reviewed in conjunction with individual workplans. In practice, there is poor congruence between frameworks for programmatic results on the one hand and performance plans of individual managers on the other. The Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation actually preclude the sharing of information between the programme evaluation and personal performance appraisal systems (regulation 107.3 (e)).

36. Currently there are no individual-level sanctions available for the non-achievement of outcome-level results (A/60/846/Add.6, para. 39). The majority of Secretariat staff expressed the view that, when their performance is reviewed, meeting administrative requirements is considered more important than meeting programme or operational objectives (as reported in A/62/701, para. 39). Likewise, most disagree that e-PAS is used appropriately for documenting and evaluating performance. Only a very small minority of staff believe that the best candidates are usually selected for advancement. The absence of professional misconduct or wrongdoing and compliance with rules and regulations are the most easily understood benchmarks for exercise of accountability and for administration of internal justice. This emphasis is fully understandable, but runs counter to the idea of results-based management, the very heart of which is exactly that of placing emphasis on what occurs beyond procedure.

37. OIOS fully commends the articulation and recent public availability of the compacts of the Secretary-General with under-secretaries-general. Although essentially input-oriented, the initiative represents an important step of transparency and accountability. OIOS would like to note, however, that the only specific compact-related potential sanction or reward that has been flagged through available documentation is "consistent non-achievement of the targets could ultimately result in the delegated authority for recruitment and placement decisions being removed" (A/61/319, para. 7). To the knowledge of OIOS no such sanctions have ever been applied. However, more importantly in the current context, the sanction is, even if implemented, made in reference to inputs not to outcomes.

With the formal decision-making system perceived as being inadequate, parallel processes have evolved

38. Surveys and interviews suggest that many Secretariat staff find the existing formal planning, budgeting and reporting cycle to be inflexible to change. Several Secretariat entities have therefore developed separate and parallel governance arrangements for management of official development assistance (ODA) and extrabudgetary funding. In the view of OIOS, these efforts need to be understood as a rational response to results-based management limitations of the kind raised by the current report. These processes can be based on separate formulations of overarching priorities, separate sets of operational workplanning milestones,

separate forums for dialogue with Member States, separate accounts and bookkeeping, separate information technology systems in support of monitoring and separate timetables and reports on the status of progress against objectives. In contrast to the project-based ODA environment, the Secretariat regular budget resource allocation process is an enterprise of incremental adjustment to a body of expenditures that is largely fixed and recurrent (i.e., posts), thereby limiting even the potential scope to which performance information generated through results-based management can be used to inform resource decision-making.

The technical skills for results-based management are wanted and are necessary, but are not sufficient

39. OIOS finds that the notion of results-based management being an enterprise of technical proficiency was embedded in the original results-based budgeting resolution (resolution 55/231, para. 28) and reaffirmed in multiple subsequent pronouncements. OIOS finds that Secretariat staff frequently call for more results-based management resources, training and skills development. With reporting obligations being a key motivation, it was OIOS, as an extension of its previous responsibility for the programme performance report, that was called upon to support, promote and advocate results-based management. In terms of time expended on the programme performance report process, OIOS finds resources spent by the Secretariat to have been modest, albeit variable from one programme to another. Likewise, the expense of results-based management training and capacity development[23] has also been small and largely inadequate. If time and money spent on more broadly defined instruments and practices related to results-based management are considered, i.e., planning, budgeting, monitoring and evaluation at large, total resource use is more substantial.[24]

40. OIOS has no doubt that quality of reporting and evaluation will require a strengthened resource base. Simultaneously, the view of OIOS is that results-based management cannot be dealt with as an enterprise that is principally constrained by the absence of technical proficiency on the part of Secretariat staff. Nor is it a function that managers can delegate to monitoring and evaluation specialists as primary practitioners. No amount of monitoring and evaluation can compensate for goals and objectives that are unclear or for which accountability is absent. The culture of the Organization will not be transformed through such efforts on the part of Secretariat staff (an impression that is reflected in paragraph 26 of General Assembly resolution 62/236). Whatever assets are deployed to such functions, the ensuing availability of a fact, however accurate, frequent and pertinent, does not by itself lead to more rational decision-making. As experienced by members of the Organization for Economic Cooperation and Development: "A key reason for the difficult progress is that integrating performance information into public management and budgeting is not primarily a technical problem that can be left to 'experts' such as performance measurers and evaluators."[25]

[23] The total cumulative budget allocated specifically for results-based management capacity development since 2001 was $278,282.

[24] OIOS notes the calculation, in paragraph 162 of A/57/387, that approximately $10.3 million of staff time was spent on servicing the committees during the 18 months before the final budget approval.

[25] GOV/PGC/SBO(2005)3, para. 8, OECD Working Party of Senior Budget Officials.

In the recent review of results-based management not enough emphasis was given to the necessary role of the General Assembly

41. In response to the draft of the current report, the administration stated that the proposals contained in document A/62/701 *present a practical and phased strategy for what would be the only realistic way to implement results-based management.* OIOS has reviewed the report of the Secretary-General and appreciates that it recognizes many of the shortcomings in results-based management raised in the present report. OIOS notes that the Secretary-General proposes measures that merit consideration, but observes that these lack specificity, prioritization and order of sequencing. OIOS moreover finds that the results-based management principles and actions proposed by the Secretary-General are not clearly tied to the underlying incentives, sanctions and rewards that guide decision-making at different levels of the Organization, including the intergovernmental bodies. The report of the Secretary-General (A/62/701) did not, in particular, address with sufficient clarity the role that the General Assembly needs to play in making results-based management work at the United Nations. Although OIOS agrees that the principles of "ownership", "leadership" and "culture" of results are critical to results-based management, it notes that these are not issues that can be addressed through administrative measures under the authority of the Secretary-General.

III. Conclusions

The introduction of results-based management has brought a superficial orientation to outcomes

42. A challenge for the management of any public organization is to identify the maximum level of results that can be operationally planned for and in respect of which attribution and accountability can meaningfully be exercised. OIOS finds that results-based management has been implemented at the Secretariat in the narrow sense of outcomes being used to justify approval of budgets. However, organizational objectives at the outcome level are numerous, inherently vague and invariably subject to multiple influences and risk factors. Consequently, individual contributions to outcomes defy precise target-setting and impartial monitoring and actual attainment or non-attainment of results matters little to subsequent decision-making. The introduction of results-based management has not signified a paradigmatic shift away from detailed rules, regulations and controls. The Secretariat's programmatic, financial and human resource management systems are as complex and detailed as ever, and largely centred upon tracking inputs, activities and outputs,

The culture of the Organization remains focused on compliance

43. OIOS concludes that results-based management is not an enterprise principally constrained by technical proficiency and capacity for data collection, measurement, documentation or reporting on the Secretariat side, although that matters too. The introduction of results-based management has not brought about a shift in organizational culture away from compliance with rules and regulations as the defining characteristic of behaviour. A constraint inherent to the concept of results-based management is that any formalistic approach to codifying how to achieve outcomes can stifle the innovation and flexibility required to achieve the very same

outcomes. Orientation towards programmatic results will ultimately only surface as a significant trait of organizational behaviour once such results are actually made to matter. If not connected to underlying incentives, sanctions and rewards, results-based management becomes a paper-making chore. With the current report, OIOS highlights that more strict enforcement of existing rules and regulations will not be a meaningful avenue of response.

Progress in implementing results-based management needs to begin with renewed reform of the budget system

44. The core of organizational decision-making is the budget process. The most critical barriers to implementation of results-based management follow from the essential limitations placed by the General Assembly in its resolution 55/321 on results-based budgeting, the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation and the subsequent planning, budgeting and reporting instructions that were developed on that basis. The restrictions embedded in these policies makes ownership of results-based management questionable. Although results-based budgeting was recognized from the outset as being in need of implementation in a "gradual and incremental" manner (resolution 55/231, para. 6), OIOS finds that little change has been made to the original design. OIOS notes that the Secretary-General has made a number of proposals to change the planning and budgeting process (see A/58/395 and A/62/81). However, no further revision has been made to the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation since results-based budgeting was introduced, although such revisions had been made on at least two earlier occasions.

IV. Recommendations

45. OIOS finds that results-based management has been an administrative chore of little value to accountability and decision-making and concludes that there are conceptual and operational caveats to the applicability of results-based management in the Secretariat. However, OIOS recognizes that it will, at some level, remain an aspiration for the Organization. The recommendations below are intended as a constructive contribution to the Organization eventually making progress towards results-based management. OIOS would nevertheless like to stress the potential risk of them being dealt with in a piecemeal manner. What the Organization needs is a comprehensive "new deal" on results-based management. To that effect, OIOS offers the recommendations below.

Recommendation 1

46. With the aim of establishing clarity of ownership of and expectations for results-based management, OIOS recommends that the Secretary-General propose to the General Assembly an overarching policy and terminological framework to circumscribe the extent and limitations of results-based management in the Secretariat. In the event that the Assembly wishes to renew its commitment to results-based management, OIOS recommends that the proposal from the Secretary-General include an internal control framework that establishes direct links between levels of results (with particular reference to the distinction between outputs and

outcomes) and layers of authority and accountability (between Member States, the Secretary-General, Secretariat managers and staff), together with criteria for how results planned and results actually achieved will inform different stages of decision-making. The proposed framework should, moreover, be applicable to Secretariat regular budget resources as well as the extrabudgetary arena (paras. 13-15, 33, 34 and 41-44 above).

47. *The Secretary-General agrees with the overall thrust of OIOS's recommendation but cautions that the implementation of the details of these new approaches must be gradual, allowing for constructive dialogue on the needed changes and taking into consideration the limitations and special circumstances of the Organization.*

Recommendation 2

48. To ascertain that the framework of rules and regulations pertaining to planning, budgeting monitoring and the performance review process better serve the strategic planning and management needs of the Organization, OIOS recommends that the Secretary-General initiate a comprehensive review and reformulation of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, which were last revised in 2000. The review should address the instruments, structure, timetable and roles and responsibilities of all parties to the resource planning and decision-making process of the Secretariat (paras. 15, 16, 21-24, 33, 34 and 44 above).

49. *The Secretary-General agrees with this recommendation.*

Recommendation 3

50. In response to its observation concerning fragmentation in results-related reporting, OIOS recommends that the Secretary-General request the Assembly to mandate a single performance report combining programmatic and financial information in a manner that consolidates rather than adds to his total reporting obligations (paras. 26-28, and 32 above).

51. *The Secretary-General agrees that there is a need to combine programmatic and financial information to allow for more efficient and comparative analysis of performance. While the pilot "United Nations Secretariat Consolidated Reports" for 2005 and 2006 were proposed as templates for more results-oriented reporting without immediately replacing any existing reporting requirements, the General Assembly did not take a position on their continuation. The Department of Management expects to review the format and content of the programme performance report, for which it now has responsibility, with a view to possibly including financial information.*

Recommendation 4

52. In order to ascertain the possibility of alignment between programmatic, financial and personnel planning and results data, OIOS recommends that the Secretary-General integrate programmatic results frameworks into the first wave of the enterprise resource planning system and broader information and communications strategy of the Organization (paras. 27 and 28 above).

53. *The Secretary-General states that the results-based management module is scheduled for full implementation during wave 2 of the enterprise resource planning, but that "certain key elements" will be included in wave 1.*

Recommendation 5

54. Because they are the level of performance for which managers can most transparently be held accountable and thus form a necessary part of organizational performance management (if not results-based management results at the outcome level), OIOS recommends that the Secretary-General initiate a comprehensive review and revision of the current categorization of outputs, as reflected in budgeting and reporting requirements, with particular reference to meaningful capture of outputs outside the traditional Secretariat arena, for example outputs pertaining to field-based peacekeeping, humanitarian and development work (paras. 25, 29 and 42).

55. *The Secretary-General notes that his report contained in document A/62/701 proposes a review of the current output methodology.*

Recommendation 6

56. In order to strengthen the technical and methodological capacities of the Organization, OIOS recommends that the Secretary-General: (a) prepare and submit for the consideration of the General Assembly a request for additional resource requirements that comprehensively addresses the respective requirements of: (i) central results-based management coordination; (ii) department-level results planning and self-evaluation; and (iii) independent inspection and evaluation; and (b) promulgates the United Nations Evaluation Group norms and standards as the overarching framework of organizational evaluation practice (paras. 39-41 and 43).

57. *The Secretary-General notes that his report contained in document A/62/701/Add.1 proposes resources for establishment within the Department of Management of a division for accountability and results management and that additional resources would be considered in the context of the proposed programme budget for the biennium 2010-2011. OIOS notes that this action corresponds to recommendation 6, item (a)(i) above.*

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Sixty-third session
Item 31 of the provisional agenda*
United Nations Relief and Works Agency for Palestine Refugees in the Near East

Palestine refugees' properties and their revenues

Report of the Secretary-General

Summary

On 28 April 2008, the Secretary-General sent notes verbales to Israel and all other Member States, drawing their attention to the relevant provisions of General Assembly resolutions 62/102 to 62/105 and requesting information by 1 July 2008 concerning any action taken or envisaged in relation to their implementation. A reply dated 23 June 2008 was received from Mexico, covering various aspects of resolutions 62/102 to 62/105. The full text of the reply is reproduced in the present report. No information has been received from other Member States regarding the relevant provisions of the resolutions.

* A/63/150.

08-45797 (E) 020908

1. The present report is submitted in pursuance of General Assembly resolution 62/105 of 17 December 2007 on Palestine refugees' properties and their revenues.

2. On 28 April 2008, the Secretary-General drew the attention of the Permanent Representative of Israel to the United Nations to General Assembly resolutions 62/102 to 62/105, all of 17 December 2007, with the request that the Permanent Representative of Israel inform him by 1 July 2008 of any steps his Government had taken or envisaged taking in implementation of the relevant provisions of the resolutions.

3. Also on 28 April 2008, the Secretary-General sent a note verbale to all other Member States, drawing their attention to the relevant provisions of General Assembly resolutions 62/102 to 62/105, in particular the appeal contained in paragraph 4 of resolution 62/102, paragraph 4 of resolution 62/103 and paragraph 18 of resolution 62/104 for contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East for assistance. The importance of paragraph 4 of resolution 62/105 was also emphasized. The Secretary-General requested information by 1 July 2008 on any actions taken or envisaged in relation to their implementation.

4. A reply dated 23 June 2008 was received from Mexico covering various aspects of General Assembly resolutions 62/102 to 62/105. The text read as follows:

> The Permanent Mission of Mexico to the United Nations presents its compliments to the Department of Political Affairs and has the honour to refer to its communication of 28 April 2008 (DPA/APD/GA/RES.62/102-105), relating to the implementation of the resolutions on the situation in the Middle East and on the United Nations Relief and Works Agency for Palestine Refugees in the Near East, adopted during the sixty-second session of the General Assembly. In that connection, the Permanent Mission of Mexico transmits [below] information relating to our country's compliance with resolutions 62/102-62/105.
>
> *Resolution 62/102 on assistance to Palestine refugees.* Mexico considers that the solution to the conflict in the Middle East must include a just solution to the problem of the refugees. It reiterates its support for the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), to which it consequently makes an annual contribution of $5,000.
>
> *Resolution 62/103 on persons displaced as a result of the June 1967 and subsequent hostilities.* Mexico supports the work that UNRWA is doing on behalf of displaced persons and believes it important to make a wide-ranging analysis of the issue of their displacement, including possible ways of combating the causes that give rise to mass movements of persons.
>
> *Resolution 62/104 on operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.* Pursuant to paragraph 18 of the resolution, the Mexican Ministry of Foreign Affairs offers fellowships to scholars from Asia, the Pacific, Africa and the Middle East, including Palestine, for the study of Mexican culture at the Educational Centre for Foreign Students (Centro de Enseñanza para Extranjeros — CEPE) at the Taxco campus of the National Autonomous University of Mexico; for advanced study towards a master's degree or a doctorate; [and] for high-level

doctoral research with tutorials in academic institutions or for post-doctoral visits of three months to two years in academic institutions. In addition, pursuant to paragraph 19 of the resolution, it must be pointed out that while financial restrictions make it impossible for Mexico to increase its contributions to UNRWA, it will nevertheless maintain the annual contribution of $5,000 referred to earlier.

It should be noted that Mexico has established a cooperative programme between the National Autonomous University of Mexico and the Palestinian Children's Relief Foundation, under which three annual scholarships are awarded to Palestinians for training in the Faculty of Dentistry. Likewise, Mexican doctors have on four occasions travelled to the Palestinian city of Nablus to perform about 400 maxillofacial surgeries.

Resolution 62/105 on Palestine refugees' properties and their revenues. Mexico has no competence to implement the provisions of this resolution.

5. No information has been received from other Member States with regard to steps taken concerning General Assembly resolution 62/105.

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Item 67 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and transnational corporations and other business enterprises

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of his Special Representative on the issue of human rights and transnational corporations and other business enterprises, submitted in accordance with Human Rights Council resolution 8/7.

* A/63/150 and Corr.1.

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Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises

Summary

At its eighth session in June 2008, the Human Rights Council welcomed the policy framework for business and human rights proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and extended his mandate for another three years (see Council resolution 8/7). The mandate of the Special Representative was first established by the then Commission on Human Rights in 2005 in its resolution 2005/69.

The extended mandate of the Special Representative requires him to report annually to the General Assembly. The present report outlines the main components of the conceptual and policy framework identified in his report to the Human Rights Council (A/HRC/8/5). The framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The report also outlines the anticipated work streams to be undertaken by the Special Representative in implementing his extended mandate from the Human Rights Council and contains a brief update of relevant activities undertaken by the Special Representative since completion of his most recent report.

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I. Introduction

1. At its eighth session in June 2008, the Human Rights Council welcomed the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and extended his mandate for a further three years (see Council resolution 8/7). The original mandate had been adopted by the then Commission on Human Rights in its resolution 2005/69.

2. The new mandate of the Special Representative requires him to report annually to the General Assembly. In view of the short period of time between the extension of his mandate in June 2008 and the deadline for submission of his report to the Assembly in August 2008, the present report is brief. It outlines the main components of the conceptual and policy framework the Special Representative presented to the Human Rights Council (in A/HRC/8/5), which the Council welcomed in its resolution 8/7, outlines the anticipated work streams to be undertaken by the Special Representative in implementing his extended mandate and summarizes some of the main activities of the Special Representative since the eighth session of the Human Rights Council.

II. Protect, respect and remedy framework

3. The Special Representative's mandate was established in the wake of the deeply divisive debates in the Commission on Human Rights concerning the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, approved by the Subcommission on the Promotion and Protection of Human Rights in 2003 (E/CN.4/Sub.2/2003/12/Rev.2). Granting that the document contained useful elements and ideas, the Commission nevertheless concluded that the draft norms had no legal standing (see Commission on Human Rights decision 2004/116) and it took no action on the proposal. Instead, in 2005, the Commission adopted the Special Representative's wide-ranging mandate to, inter alia, identify and clarify existing standards, elaborate on the role of States and share his views and recommendations on how to strengthen the protection of human rights against corporate-related abuse (see Commission resolution 2005/69).

4. In the past three years, the Special Representative has conducted no fewer than 14 multi-stakeholder consultations on five continents; conducted more than two dozen research projects, some with the assistance of global law firms and other legal experts, non-governmental organizations (NGOs), international institutions and committed individuals; produced more than 1,000 pages of documents; received some 20 submissions; and reported once to the Commission on Human Rights and twice to the Human Rights Council.[1]

5. One common theme ran throughout the extensive consultative process. Despite differences among the stakeholder groups, every one of them expressed the urgent

[1] All documentation produced by and for the mandate, including the Special Representative's reports to the Commission on Human Rights and the Human Rights Council, is posted on his website: http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative. The Special Representative is grateful to the Business and Human Rights Resource Centre for hosting the site.

need for a common framework of understanding of the complex business and human rights challenges, a foundation on which thinking and action could build in a cumulative fashion.

6. Accordingly, in 2008, the Special Representative submitted a strategic policy framework to the Human Rights Council[2], organized around the three fundamental principles of protect, respect, and remedy: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The State duty to protect is critical because it lies at the very core of the international human rights regime; the corporate responsibility to respect is essential because it is the basic expectation society has of business; and access to remedy must form part of any successful strategy because even the most concerted efforts cannot prevent all abuse.

7. Under each of the framework's three principles, the Special Representative surveyed various ways in which the principles are being and can be operationalized by States and companies, through changes in national laws, regulatory policies, international mechanisms and voluntary initiatives.[3]

8. The first of the three principles of the framework brings the State back into the business and human rights equation. It is often stressed that Governments are the most appropriate entities to make the difficult balancing decisions required to reconcile different societal needs. But in the area of business and human rights, the Special Representative questioned whether Governments have gotten the balance right. His research and consultations indicated that most Governments take a narrow approach to managing the business and human rights agenda. It is often segregated within its own conceptual (often weak) institutional box, and it is kept apart from, or heavily discounted in, other policy domains that shape business practices, including commercial policy, investment policy, securities regulation and corporate governance. That is roughly equivalent to a company setting up a corporate social responsibility department in isolation from its core business operations. Inadequate domestic policy coherence is replicated internationally.

9. The main recommendation of the Special Representative to States is that human rights concerns in relation to business need to be expanded beyond their currently narrow institutional confines. Governments need to ensure that human rights compliance becomes part of defining an ethical corporate culture, and they need to consider human rights impacts when they sign trade agreements or investment treaties, especially when they provide export credit or investment guarantees for overseas projects in any context where the risk of human rights challenges is known to be high.

10. The second component of the framework is the corporate responsibility to respect human rights, meaning, in essence, to do no harm. In addition to legal compliance, companies are subject to what is sometimes called a social licence to operate, that is, prevailing social expectations. In fact, the corporate responsibility to respect human rights is recognized in virtually every voluntary initiative companies have adopted, and it is stipulated in several non-legally binding (so-called soft law) instruments. It is the baseline expectation for all companies in

[2] A/HRC/8/5 and Add.1 and 2.

[3] For full explanation of the different components of the framework, see A/HRC/8/5.

all situations. As it is the baseline, a company cannot compensate for damage caused to human rights in one place by performing good deeds elsewhere. And doing no harm is not merely a passive responsibility for firms, but may entail positive steps. For example, a workplace anti-discrimination policy might require a company to adopt specific recruitment and training programmes.

11. Yet how do companies know that they respect human rights? Do they have systems in place enabling them to support the claim with any degree of confidence? In fact, relatively few companies do. Accordingly, the Special Representative has proposed a due diligence process for companies to manage the risk of human rights harm with a view to avoiding it. The scope of that process requires that companies pay attention to three factors: the country context in which the business activity takes place; a company's own activities; and whether it might contribute to abuse through a relationship connected to its activities, such as with business partners, suppliers or State agencies.

12. Access to remedy is the third principle. Even where institutions operate optimally, disputes over adverse human rights impacts of companies are likely to occur, and victims will seek redress. Currently, access to formal judicial systems is often most difficult where the need is greatest. And non-judicial mechanisms are seriously underdeveloped, from the company level up through national and international spheres. The Special Representative has noted some desirable changes for improving access to justice, including through strengthened judicial capacity with regard to complaints against business. He has identified criteria of effectiveness for non-judicial grievance mechanisms, based on which he has suggested ways of strengthening some existing mechanisms. He has underlined that providing effective access to remedy is part of both the State duty to protect and the corporate responsibility to respect, and that in relation to the latter, mechanisms provided at the company level must be based on direct or mediated dialogue rather than on self-adjudication.

13. The Human Rights Council responded favourably to the proposed framework. Resolution 8/7, welcoming the report and extending the mandate of the Special Representative, had 43 co-sponsors and was adopted without a vote. The adoption of the resolution marks an important expression of support by the authoritative United Nations human rights body for a new way forward through which all parties can achieve greater conceptual coherence and policy guidance in the business and human rights domain.

14. The Special Representative's three-pillar framework has also been well received by a broad spectrum of stakeholders: many NGOs, including Amnesty International and the Centre for Human Rights and Environment, based in Argentina; major global business associations, such as the International Chamber of Commerce and the International Organization of Employers; and a large group of socially responsible investors such as the Social Investment Forum and the Business Leaders Initiative on Human Rights, a group of 13 well-recognized global firms whose aim is to find "practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context".[4]

[4] All submissions and comments received by the Special Representative concerning the three-pillar framework are posted on his website at http://www.business-humanrights.org/Documents/RuggieHRC2008.

III. Next steps

15. Under the extended mandate, the Human Rights Council has tasked the Special Representative with operationalizing the framework with a view to providing more effective protection to individuals and communities against human rights abuses by, or involving, transnational corporations and other business enterprises. Specifically, the mandate asks the Special Representative:

(a) To provide views and concrete and practical recommendations on ways to strengthen the fulfilment of the duty of the State to protect all human rights from abuses by or involving transnational corporations and other business enterprises, including through international cooperation;

(b) To elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders;

(c) To explore options and make recommendations, at the national, regional and international level, for enhancing access to effective remedies available to those whose human rights are impacted by corporate activities;

(d) To integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children;

(e) To identify, exchange and promote best practices and lessons learned on the issue of transnational corporations and other business enterprises, in coordination with the efforts of the human rights working group of the Global Compact;

(f) To work in close coordination with United Nations and other relevant international bodies, offices, departments and specialized agencies, and in particular with other special procedures of the Council;

(g) To promote the framework and to continue to consult on the issues covered by the mandate on an ongoing basis with all stakeholders, including States, national human rights institutions, international and regional organizations, transnational corporations and other business enterprises, and civil society, including academics, employers' organizations, workers' organizations, indigenous and other affected communities and non-governmental organizations, including through joint meetings.

16. At the time of writing (August 2008), the Special Representative was still consulting with stakeholders, experts and other relevant partners about how best to pursue the different components of his renewed mandate. The following paragraphs outline the Special Representative's preliminary plans and ideas for how to move the mandate forward, although it should be understood that they are subject to change based on further reflection.

17. To advise him on all aspects of his work in the next phase, the Special Representative is planning to convene a high-level leadership group from diverse sectors and regions to provide ongoing strategic and substantive advice.

A. State duty to protect

18. In his most recent report to the Human Rights Council, the Special Representative drew attention to the fact that the human rights regime cannot possibly be expected to function as intended in the unique circumstances of conflict zones, which are typically characterized by sporadic or sustained violence, governance breakdown and the absence of the rule of law. It is in such circumstances that the most egregious human rights abuses occur, including those related to corporations. The Special Representative concluded that specific policy innovations are required to prevent corporate abuse in conflict zones, yet many States have done little to grapple with those difficult issues.

19. The Special Representative proposes to explore the policy options available to assist States in dealing with such situations. To be relevant and successful, the work will require a consultative process involving developed and developing States; States that have recent experience of conflict within their borders and those that engage, through peacekeeping or development assistance, in efforts to mitigate conflict and support peacebuilding.

20. The Special Representative hopes that a collaborative effort focused on conflict zones could enable the identification of a range of positive, supportive and/or collaborative policies and tools which both home and host States could use to avoid or mitigate companies contributing to conflict, so that companies may be a positive force for peacebuilding rather than a cause or stimulant of conflict.

21. Great interest has been expressed by Government representatives, legal practitioners, companies and civil society with regard to the work of the Special Representative on investment agreements and human rights. Regional consultations are being scheduled in Peru and South Africa to follow up on consultations held in London in May 2008 (see paras. 31-34 below). These consultations will provide the Special Representative with ideas and suggestions on the best ways to address the issues identified in the March 2008 research paper published by the Special Representative and the International Finance Corporation focusing on the implications for States in meeting their duty to protect arising from private or public bilateral investment treaties and host Government agreements.[5] The Special Representative is also commissioning work to determine the scope and content of a possible future project on trade-related issues.

22. In line with the statement of the Special Representative in his 2008 report that Governments are uniquely placed to foster corporate cultures in which respecting rights is an integral part of doing business, the Special Representative intends to further explore the ways in which existing corporate law and related principles are being used to help improve corporate behaviour with respect to human rights, as well as provide guidance to States on the potential for regulatory reforms, where appropriate. In addition, a number of issues related to victims' access to formal judicial mechanisms are also being explored (see para. 24 below).

[5] "Stabilization clauses and human rights", a research project conducted for the International Finance Corporation and the Special Representative of the Secretary-General on business and human rights, March 2008: available at http://www.reports-and-materials.org/Stabilization-Clauses-and-Human-Rights-11-Mar-2008.pdf.

B. Corporate responsibility to respect

23. The Special Representative is embarking on a process to elaborate a set of guiding principles on the scope and content of the corporate responsibility to respect human rights, including due diligence requirements and the related accountability measures. To ensure that broad and expert perspectives inform the development of the principles, the Special Representative plans to ensure multifaceted, multi-stakeholder consultation. It will comprise ongoing strategic and substantive advice from the high-level leadership group, and contributions from a series of multi-stakeholder consultations.

C. Access to remedies

24. The third pillar of the framework is access to remedies. The Special Representative's most recent report to the Human Rights Council highlighted the need for improved access to remedies through both judicial and non-judicial mechanisms. Under his new mandate, he will examine in greater depth existing barriers to access to judicial remedy at the domestic and transnational levels.

25. With regard to non-judicial mechanisms, the Special Representative will advance two lines of work. The first, focusing on existing non-judicial mechanisms, builds on the observation in his report to the Human Rights Council that a significant obstacle to accessing non-judicial grievance mechanisms is the lack of awareness as to where they are located, how they function and what supporting resources exist (A/HRC/8/5, para. 102). In discussions with organizations that host grievance mechanisms, it has become apparent that the lack of information about such mechanisms is a barrier to learning about different models of dispute resolution; which work best in what circumstances and why; the outcomes and settlements different approaches are producing; and what lessons those experiences may hold for developing policies to prevent disputes in the first place.

26. To help redress the information deficit, the Special Representative has initiated a collaboration with interested organizations to establish an international, interactive web-based forum, known as a "wiki". The forum will enable anyone with Internet access to find, contribute to or comment on information about grievance and dispute resolution mechanisms around the world; how they work; the expert human rights, mediation, legal and other resources that can support their effective use; and the learning they offer. It will be possible to post information in all official United Nations languages and in others as well.

27. Updates on the initiative will be posted on the Business and Human Rights Resource Centre website, where the launch of the wiki will also be announced (http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative). It is the Special Representative's strong hope that individuals and organizations from all States and sectors, whether from business, civil society, Government, academic, legal, mediation or other backgrounds, will engage in the online community, refer others to it and help collectively address the information barrier to effective remedy and dispute resolution in the business and human rights area.

28. The second strand of work on non-judicial grievance mechanisms will look at gaps in the patchwork of existing grievance mechanisms, both performance and institutional gaps. To that end, a multi-stakeholder consultation will be organized for

the mandate in November in collaboration with Oxfam USA. The aim will be to stimulate new thinking and rigorous debate around the most promising models for non-judicial grievance mechanisms that could add value to what currently exists. From the debate, as well as his wider, ongoing discussions with all stakeholder groups, the Special Representative hopes to gather some options and recommendations to put to the Human Rights Council and General Assembly in 2009, in line with his mandate.

29. In that context, the Special Representative continues also to collaborate with other relevant organizations at the national, regional or international level, including with national human rights institutions. He warmly welcomes recent discussions of business and human rights issues at meetings of national human rights institutions in Geneva, Copenhagen and Kuala Lumpur, and looks forward to benefiting from continued collaboration.

IV. Update on the activities of the Special Representative

30. Since finalizing his report to the Human Rights Council in March 2008, the Special Representative has addressed a number of organizations and stakeholders of strategic and substantive importance to his mandate. Copies of all speeches and statements given by the Special Representative are accessible on his website http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative.

31. On 17 May 2008, the Special Representative delivered the keynote address at the annual meeting of the International Law Association in London. The remarks summarized the work of the mandate and the three-pillar framework, and spelled out the reasons why he did not recommend an international legal instrument for business and human rights at this point in time. The meeting attracted hundreds of international lawyers from numerous countries. During the meeting, a panel discussed the Special Representative's work on investment and human rights.

32. On 22 May 2008, the Special Representative gave a public address at Chatham House in London entitled "Next Steps in Business and Human Rights". The event was co-hosted by the Confederation of British Industries and the Business and Human Rights Resource Centre.

33. Also on 22 May 2008, the Special Representative, in conjunction with the International Finance Corporation, held the first multi-stakeholder consultation on investment agreements and human rights. The consultation aimed to discuss the findings of the research paper on stabilization clauses and human rights, a joint project between the International Finance Corporation and the Special Representative. The consultation was attended by legal practitioners, international organizations including representatives from the Organization for Economic Cooperation and Development (OECD), the United Nations Commission on International Trade Law (UNCITRAL), and the Energy Charter secretariat, as well as individuals from industry, academia and civil society. There was broad consensus that the paper published by the Special Representative provided an excellent platform for moving forward the discussion on an important topic related to both the duty to protect and the responsibility to respect. A summary report from the consultation will be posted on the website of the Special Representative.

34. On 23 May, the Special Representative addressed a workshop convened by Global Witness and the British Institute of International and Comparative Law. The workshop was devoted to the theme "Protect, respect and remedy: a discussion of John Ruggie's business and human rights framework — strategies for moving forward".

35. On 24 June 2008, the Special Representative gave the keynote address at the annual meeting of the OECD National Contact Points in Paris. While visiting OECD, the Special Representative also spoke at a conference held jointly by OECD and the International Labour Organization (ILO) on international labour standards, and met with representatives of the OECD Investment Committee and Development Assistance Committee to explore overlapping interests and possible ways of collaborating.

36. Also on 24 June 2008, a representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) gave a briefing on behalf of the Special Representative to the seventh annual inter-committee meeting of United Nations treaty bodies in Geneva about the framework and its relevance to the work of the treaty bodies. The briefing followed a presentation given by the Special Representative to the sixth annual inter-committee meeting in June 2007 outlining the findings of a major research project mapping State obligations under the seven core human rights treaties to regulate and adjudicate corporate activities, based on reports and observations from the seven treaty bodies.[6] The Special Representative intends to continue his engagement and dialogue with the treaty bodies, including through interaction with representatives of the treaty bodies during their annual meetings.

37. During the period from 23 to 27 June 2008, a member of the Special Representative's team addressed the human rights advocacy and business programme in Manila, a capacity-building programme for community advocates held in partnership with the diplomacy training programme of the University of the Philippines Institute of Human Rights and Action for Economic Reform.

38. Following up on a previous statement made by the Special Representative to the United Nations Commission on International Trade Law (UNCITRAL) Working Group II (international arbitration and conciliation) in February 2008, the Special Representative was requested by the Secretary of the UNCITRAL secretariat to attend the plenary meeting of UNCITRAL, held in New York in June 2008. On 27 June 2008, the Special Representative, through a representative, made a statement to UNCITRAL regarding the importance of the principle of transparency in investor-State arbitration. Following debate among the member States, the Commission unanimously agreed that transparency should be the priority for the arbitration working group immediately following the termination of its current work on revising the commercial arbitration rules.

39. On 15 July, a member of the Special Representative's team attended the twentieth session of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in Geneva, and gave a panel presentation on the current and potential role of national human rights institutions in the area of business and human rights. In follow-up, an envoy of the

[6] A Summary of the key findings and examples of the seven treaty-specific reports prepared by the Special Representative is contained in A/HRC/4/35/Add.1.

Special Representative attended a meeting of various national human rights institutions in Copenhagen on 1 and 2 July, hosted by the Danish Institute for Human Rights, which focused on the possibility of establishing a working group on business and human rights, under the International Coordinating Committee.

40. From 28 to 31 July 2008, a member of the Special Representative's team attended the thirteenth annual meeting of the Asia Pacific Forum of National Human Rights Institutions in Kuala Lumpur. The representative assisted the Advisory Council of Jurists as it considered the topic of human rights and corporate social responsibility as requested by the Forum. In its preliminary recommendations to the Forum, the Council welcomed the Special Representative's three-pillar framework and suggested that national human rights institutions use it as a basis for their work on business and human rights.

V. Conclusion

41. **The Special Representative looks forward to his dialogue with the General Assembly this year and in the future. The business and human rights agenda is enormously complex and much hangs in the balance: the rights of individuals to enjoy lives of dignity, the role of business in achieving economic development and the social sustainability of globalization itself. The Special Representative believed, from the outset of his mandate, that progress will be achieved only if actions are based on careful analysis and broad social and political support. Accordingly, in planning the next phase of his work, he fully intends to continue to employ the methodology that has served the mandate so well to date: objective research, inclusive consultations and the engagement of a wide range of actors whose expertise and influence can turn principles into practice.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with resolution 8/6 of the Human Rights Council.

Report of the Special Rapporteur on the independence of judges and lawyers

Summary

This is the fourth report of the Special Rapporteur to the General Assembly. It addresses the issues relating to his mandate on which he has focused most closely since his report to the Human Rights Council at its eighth session. It gives an account of activities carried out since then and of activities to be carried out in the near future, including country visits, communications with States and participation at international meetings.

The present report contains a summary of the main conclusions and recommendations of the international seminar on "The protection of human rights under states of emergency, particularly the right to a fair trial", which was held in Geneva in December 2007. In the light of the discussions among the experts, international law and jurisprudence and previous studies of the Special Rapporteur, section IV of the report recalls the important role of judges in protecting human rights during states of emergency and requests States not to interfere with the operation of the justice system, including in times of national emergency.

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Section V reflects the main safeguards against arbitrary detention and due process safeguards, in both ordinary circumstances and states of emergency. The Special Rapporteur stresses the judiciary's central role in guaranteeing these safeguards and warns of the serious consequences that any attempt to deprive judges of this responsibility may have on the exercise of human rights.

The report also refers to judges' remuneration and the serious effect that insufficient or conditional remuneration can have on access to justice and the proper administration of justice. The Special Rapporteur recalls the international instruments that stipulate the importance of offering judges adequate salaries and working conditions.

Finally, the Special Rapporteur outlines the progress made since the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance and presents a summary of the latest developments in the field of international justice. The report concludes with a recapitulation of the main points and provides recommendations for States and the General Assembly.

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I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, in this fourth report to the General Assembly, gives an account of his most recent activities and the activities that he plans to undertake in the coming months. He highlights the important role of judges in protecting human rights during states of emergency. He also addresses the issue of guarantees of personal freedom and due process from the perspective of the role of judges. He recalls the importance of guaranteeing adequate remuneration for judges and undertakes to give special attention to this issue in the future. Finally, he reviews the most relevant developments in the field of international justice and closes with conclusions and recommendations.

II. Activities of the Special Rapporteur

2. In 2007 the Special Rapporteur spoke at a training course on the inter-American and universal systems for human rights protection, held in Washington, D.C., from 16 to 27 October 2007 by the Inter-American Commission on Human Rights and the Washington College of Law.

3. In November 2007 the Special Rapporteur spoke at the third meeting of the Ibero-American Legal Assistance Network, held in Punta del Este, Uruguay, and in December 2007 he chaired the seminar of experts referred to in the introduction to the present report. In March 2008, he participated in the Ibero-American Judicial Summit held in Brasilia.

4. The Special Rapporteur made an official visit to the Democratic Republic of the Congo from 15 to 21 April 2007 at the invitation of the Government. The mission report was submitted to the Human Rights Council at its eighth session. From 19 to 29 May 2008, he made an official visit to the Russian Federation. The mission report will be submitted to the Human Rights Council in 2009. The Special Rapporteur thanks both Governments for having made these visits possible.

5. Finally, in June 2008, the Special Rapporteur participated in the fifteenth annual meeting of special procedures mandate holders of the Human Rights Council and the eighth session of the Human Rights Council, held in Geneva, at which he introduced his report on the Democratic Republic of the Congo and his annual report, whose main theme was access to justice.

6. The Special Rapporteur plans to visit Angola, Cambodia, the Philippines, Guatemala, Kenya, Nigeria, the Islamic Republic of Iran, Georgia and Azerbaijan. He looks forward to affirmative replies about visits that have not yet been approved. He thanks the Governments that have already given their consent and is ready to discuss with them possible dates for the visits. He sent a letter to the Government of Fiji proposing dates for a visit, in light of the statement made in May 2008 by the Attorney-General in support of such a visit. He hopes to reach an agreement in the near future on the dates of this visit.

7. Finally, the Special Rapporteur would like to mention the recent progress in the Maldives. A new Constitution was adopted by the Constituent Assembly in June 2008 and ratified by the President on 7 August 2008. The Constitution incorporated several recommendations made by the Special Rapporteur following his visit to the country in 2007, including the establishment of a Supreme Court as the highest

court in the country, the establishment of an independent Judicial Service Commission and the creation of the post of Attorney-General.

III. The protection of human rights under states of emergency, particularly the right to a fair trial

8. On 3 and 4 December 2007, a seminar of experts on "The protection of human rights under states of emergency, particularly the right to a fair trial" was held in Geneva. It was organized by the Office of the United Nations High Commissioner for Human Rights at the initiative of the Special Rapporteur on the independence of judges and lawyers, who chaired the seminar, and in cooperation with the International Commission of Jurists. The Special Rapporteur would like to bring to the attention of the General Assembly the following points which, in his opinion, are particularly important.

9. Declared and undeclared states of emergency continue to give rise to serious human rights violations. The most common and worrying violations include arbitrary detention, torture and ill-treatment, enforced disappearance, denial of the right to challenge in court the legality of a detention, denial of the right to be tried by an independent court, unfair trials, attacks on freedom of expression and association, and forced labour.

10. The experts took note of the rising number of States that declare states of emergency and of States that, without declaring a state of emergency, have adopted or strengthened national security measures or counter-terrorism laws and regulations that allow for limitations of human rights that are comparable to, or even more drastic than, those that might be adopted during states of emergency. They observed that an increasing number of States derogate from rights in disregard of the conditions imposed by international law, especially those contained in article 4 of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"). In some cases, even non-derogable rights are suspended.

11. Seminar participants also expressed concern about the impact that states of emergency tend to have on the judiciary's independence. In these circumstances, extraordinary powers are granted to military or special tribunals to try civilians, without the necessary safeguards to prevent violations of the right to a fair trial. The experts recalled that the suspension of rights during states of emergency must meet the requirements laid down in international law and regulations, which include judicial review of the legality of both the declaration and the measures adopted.

12. The experts stressed that the judiciary's role in protecting human rights cannot be restricted during states of emergency. They condemned the tendency to remove judges from office and grant extensive jurisdictional powers to military tribunals, including the authority to try civilians.

13. Notwithstanding the above-mentioned points, the last decade has seen important legislative and judicial developments relating to the protection of human rights during states of emergency. According to the experts, one of the most important was the expansion of the list of non-derogable rights. Another significant development was the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance, which not only does not contain any provision that allows for derogations from the rights it protects, but also sets out a

number of non-derogable rights, including the right to know the truth about the circumstances of an enforced disappearance and the right of a detainee to challenge the legality of a detention and receive family visits and legal assistance.

14. The following conclusions were reached at the seminar: (a) human rights law is applicable in all circumstances, including both declared and undeclared states of emergency. Human rights law therefore remains in force, together with other branches of international law, such as international humanitarian law and international labour law; (b) every state of emergency must remain within the framework of the norms and principles underpinning the rule of law. Its aim must be democratic and its adoption, implementation modalities and maintenance must be subject to controls; (c) states of emergency should never impinge on the judiciary's integrity and independence, since otherwise the rule of law would be affected; (d) all individuals must be treated within the framework of the law as subjects of law.

15. In view of such important legislative and jurisprudential developments, the experts considered it timely to suggest carrying out a study to systematize the body of rules, practice and jurisprudence relating to the protection of human rights during states of emergency at the universal, regional and national levels. This study could serve as the basis for drafting a universal declaration that incorporates the principles governing the protection of human rights during states of emergency with a view to consolidating relevant international standards. Finally, the experts suggested that the Human Rights Council should: (a) pay special attention to the exercise of human rights during states of emergency, including within the framework of the universal periodic review, under which this issue of concern should be monitored systematically; (b) establish a procedure whereby, when a State declares a state of emergency or adopts or strengthens legislation that restricts the enjoyment of human rights (representing a de facto state of emergency), it can be quickly ascertained whether that State has duly respected the main human rights norms and principles; (c) invite all the special procedures to take into account the impact of states of emergency on the rights that are relevant to their respective mandates.

IV. The role of judges in relation to states of emergency

16. The Special Rapporteur has found that there is a risk of human rights violations when a state of emergency is declared. This risk arises not only from the circumstances that led to the declaration of the state of emergency, but also from the measures that Governments adopt under the state of emergency. In accordance with article 4 of the Covenant and similar provisions of regional human rights treaties, in time of public emergency which threatens the life of the nation and the existence of which has been officially proclaimed, States may suspend certain guarantees and rights. However, such measures must respect the principles of legality, official proclamation, international notification, temporality, exceptional threat, strict necessity, proportionality, non-discrimination, and compatibility with other international obligations, including the provisions of international humanitarian law.[1] The judiciary plays an essential role in ensuring compliance with each of these principles, which represent minimum guarantees of respect for the rule of law in

[1] Report of the Special Rapporteur (A/HRC/4/25), paras. 37-53, and E/CN.4/Sub.2/1997/19 and Add. 1.

extreme situations. Nonetheless, there is a tendency to call into question judicial oversight of states of emergency by arguing that the judicial branch is incapable of assessing the extent of the emergency. Following this line of thinking, only the executive branch, or in some cases the legislative, is competent to order and implement exceptional measures. In the light of the tendency to abuse the state of emergency and the related restriction of rights, the Special Rapporteur considers that the courts cannot be denied the authority to question a Government's motives in declaring a state of emergency and suspending rights, or the authority to limit the measures imposed during states of emergency if such measures violate national and international legality.

17. The judiciary represents an essential control mechanism for ensuring that both the declaration and the provisions of a state of emergency comply with human rights law and the obligations of States in that regard. It plays a very important role in ensuring that the executive branch does not abuse its wide-ranging powers during states of emergency, especially in situations in which the regulations governing states of emergency contain ambiguities and unclear elements of certain criminal offences, such as those relating to national security.

18. The judiciary must also play a part in ensuring that the formal requirements of a state of emergency are fulfilled. In this regard, the Special Rapporteur welcomes legislation that stipulates that a state of emergency proclaimed by a Government or parliament must be subsequently ratified by the highest judicial body. Judicial oversight of the duration of a state of emergency in relation to the circumstances that prompted its adoption and that justify its renewal and maintenance is also essential. Judges must be able to nullify extensions of states of emergency if they do not meet legal requirements or if the circumstances that justified the adoption of the state of emergency have changed.

19. The judiciary also plays an essential role in assessing the proportionality of the measures adopted in relation to the seriousness of the situation. When the principle of proportionality is not strictly respected, the competent legal bodies must have the authority to nullify exceptional measures that are not proportionate to the situation or within the limits established by both national legislation and international human rights law. Judges must be able to declare illegal any exceptional measure that is based exclusively on discriminatory grounds. Furthermore, they represent the best guarantee for preventing the suspension of the non-derogable rights listed in article 4, paragraph 2, of the Covenant, and of all other rights that are also non-derogable under international law.

V. Safeguards against arbitrary detention and due process safeguards: the role of judges

20. The Special Rapporteur has received a large number of cases that show that there is a risk of human rights abuses when the role of judges is reduced, especially in relation to the rights set out in articles 9 and 14 of the Covenant, which relate to personal freedom and due process. The lack of judicial control over the restriction of these rights allows for the possibility of serious violations of non-derogable rights, including torture and ill-treatment, enforced disappearance, inhuman conditions of detention, or even extrajudicial executions. As shown in the preceding paragraphs,

these situations do not only exist during states of emergency.[2] In many cases, regardless of whether or not a state of emergency has been declared, parallel systems for the administration of justice are established on the basis of specific legislation relating to national security, the fight against terrorism or immigration control.[3]

21. International regulations and jurisprudence provide clear guidelines on the role of judges in protecting human rights and in ensuring due process safeguards and safeguards against arbitrary interference with personal freedom. The following pages contain a review of the guarantees contained in articles 9 and 14 of the Covenant and the relevant jurisprudence of regional and universal human rights bodies.

A. Safeguards against arbitrary detention

22. While circumstances do exist in which States have the power to restrict the right to liberty, human rights law establishes criteria and measures of protection to ensure that detention is neither unlawful nor arbitrary. The Special Rapporteur nonetheless observes with concern that despite the existence of extensive international standards and a rich jurisprudence on this subject, there are still many cases in which judges are removed from their role of reviewing the legality and appropriateness of detentions.

23. Under article 9, paragraph 1, of the Covenant, no one may be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. These procedures must comply both with national legislation and with international laws and principles. As the Human Rights Committee has made clear, detention must not only be lawful but must also constitute a reasonable, necessary and appropriate measure in the circumstances.[4] Accordingly, in keeping with the principle of non-discrimination that is of the very essence of the Covenant, detention may not be based solely on race, colour, sex, language, religion, political opinion, or other status.

24. Anyone who is detained has a right to be informed immediately of the reason for his detention and of his rights,[5] in particular the right to the assistance of legal counsel.[6] He must also be informed promptly of the charges against him, in a language he understands.[7] Foreigners must in addition be informed of their right to communicate with their embassies or consulates or, in the case of a refugee, a stateless person or a person under the protection of an intergovernmental

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[2] The Special Rapporteur would like to refer to his report to the Human Rights Council at its fourth session, in which he noted the impact of states of emergency and other exceptional measures on human rights and the judiciary (A/HRC/4/25, para. 51). He would also like to refer to the report that he prepared in 1997 as Special Rapporteur on the question of human rights and states of emergency (E/CN.4/Sub.2/1997/19 and Add.1), as well as the discussions that took place at the seminar on "The protection of human rights under states of emergency, particularly the right to a fair trial", which are reflected in the present report.

[3] See A/HRC/4/25, para. 52.

[4] Human Rights Committee, decision of 21 June 1994, communication No. 458/1991 (Cameroon).

[5] Article 9, para. 2, of the Covenant and principle 10 of the Body of Principles.

[6] Principle 17 of the Body of Principles and principle 5 of the Basic Principles on the Role of Lawyers.

[7] Principle 14 of the Body of Principles.

organization, the right to contact the competent international organization.[8] Any detainee also has the right to communicate with the outside world. This includes the right to communicate and receive visits, to inform family members of the arrest or detention and the place of detention and to have access to family members, a lawyer[9] and a doctor.[10] Detained foreigners are also entitled to communicate by appropriate means with representatives of their Governments or, if under the protection of an intergovernmental organization, to communicate with that organization.[11] In the context of efforts to combat terrorism, the right of detainees to have contact with the outside world, and particularly to have access to their family members and a lawyer and doctor of their choosing, has been severely restricted. National counter-terrorism legislation usually allows incommunicado detention for several days.

25. It is a fundamental guarantee that authorization for incommunicado detention must be made by a judge in order to prevent enforced disappearance and other serious human rights violations. The appearance before a judge of a person being held incommunicado may be his only point of contact with the outside world in days. Given the numerous incidents on record of abuse against persons held incommunicado, judges must play a role in the process to act as an intangible safeguard. Their role should not be limited to merely reviewing the documents on the detainee's case. On the contrary, they should meet with the individual in question and allow him to state the grounds on which he considers his detention and his treatment during detention unlawful. With respect to incommunicado detention, the Special Rapporteur on the question of torture has repeatedly called for this practice to be declared illegal.[12] The Human Rights Committee has also urged all States to enact provisions against incommunicado detention.[13]

26. International law also establishes that all persons detained under suspicion of a criminal offence have a right to legal assistance before trial.[14] If they are unable to afford a legal counsel of their own choosing, they must have a right to competent and effective legal aid free of charge. Furthermore, detainees are entitled to have adequate time and facilities to communicate confidentially with their lawyers.[15] In

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[8] Article 36 of the Vienna Convention on Consular Relations; article 16, para. 7 (c), of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and principle 16, para. 2, of the Body of Principles.

[9] Principles 5 and 7 of the Basic Principles on the Role of Lawyers.

[10] Principle 19 of the Body of Principles and article 17, para. 2 (d), of the International Convention for the Protection of All Persons from Enforced Disappearance. As the Human Rights Committee made clear in its general comment No. 20, the right to communicate with the outside world is an important guarantee for the prevention of torture.

[11] Article 36 of the Vienna Convention on Consular Relations; article 17, para. 2 (d), of the International Convention for the Protection of All Persons from Enforced Disappearance; article 16, para. 7 (b), of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; principle 16, para. 2, of the Body of Principles; rule 38 of the Standard Minimum Rules for the Treatment of Prisoners; article 2 of the Code of Conduct for Law Enforcement Officials; and article 10 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live.

[12] Report of the Special Rapporteur on the question of torture (E/CN.4/2004/56), para. 37.

[13] Human Rights Committee, general comment No. 20.

[14] Principle 1 of the Basic Principles on the Role of Lawyers; principle 17, para. 1, of the Body of Principles. See also rule 93 of the European Standard Minimum Rules for the Treatment of Prisoners and article 55, para. 2 (c), of the Rome Statute of the International Criminal Court.

[15] Principle 8 of the Basic Principles on the Role of Lawyers.

many countries, persons who have been detained under suspicion of terrorism do not have the right to consult a lawyer of their choice, especially when in police detention, and their assigned counsel do not fully perform their role of providing competent and effective legal assistance.

27. Article 9, paragraph 3, of the Covenant sets out the obligation to bring any person arrested or detained on a criminal charge promptly before a judge or other officer authorized by law to exercise judicial power. International standards do not stipulate the maximum time that may elapse between a person's detention and his appearance before a judge, suggesting that the maximum time limits should be determined on a case-by-case basis. In examining recent communications, the Human Rights Committee has indicated that an unjustified delay of three days before the detainee is brought before a judicial officer is a violation of article 9, paragraph 3.[16]

28. Although this subparagraph seems to exclude from the scope of its protection individuals who are detained outside the criminal system and those under administrative detention or in military custody, it should be noted that the other guarantees contained in article 9 have a broader scope of application. In that connection, no deprivation of liberty can be completely exempt from judicial control. All persons who are detained, whether on criminal or other grounds, have a fundamental right, in particular, to come before a court so that it may decide on the lawfulness of the detention (article 9, para. 4) and the right to an effective remedy when an individual claims to be deprived of his liberty in violation of the Covenant (article 2, para. 3).[17]

29. The right to challenge the legality of one's detention is different from the right to appear before a judge in that it applies to all persons who are deprived of their liberty (whether in criminal cases or in other cases) and is exercised by or on behalf of the detainee, and not by the authorities. It is important to remember this guarantee given the large number of persons who are detained under administrative orders as part of immigration control and the processing of asylum applications, whose detention is often ordered and renewed without proper judicial oversight.

30. The right to challenge the legality of detention or to file a petition of habeas corpus or an application for *amparo* is now a standard of customary international law. A substantial body of jurisprudence has been developed indicating that this right is meaningless in situations where a judge is replaced by an authority that is not sufficiently independent and impartial to consider the legality of detention and to determine whether the detainee's human rights are being respected. Judges must have the power to review and make decisions on the procedural and substantive grounds of detention and to order the detainee's release. Until a competent court has entered a final judgement, the legality and appropriateness of detention must be periodically reviewed in order to assess whether the original grounds for the detention remain valid.

31. The competence, independence and impartiality of the judiciary is a necessary condition for safeguarding all of these guarantees, in particular the right of habeas

[16] Human Rights Committee, decision of 14 October 2002, communication No. 852/1999 (Hungary). See also the Committee's concluding observations on Ukraine (CCPR/C/UKR/CO/6).

[17] Human Rights Committee, general comment No. 8, para. 1.

corpus. In response to the argument that the executive branch has jurisdiction to consider habeas corpus applications, the Special Rapporteur emphasizes that applications made to a Government never meet all of the conditions required by law to challenge detention before a judge. In that respect, the Human Rights Committee has held on several occasions that the possibility of having the Ministry of the Interior review the detention of an asylum-seeker does not satisfy the requirements of article 9, paragraph 4.[18] Furthermore, the Human Rights Committee has indicated that giving a prosecutor rather than a judge the authority to determine the lawfulness of preventive detention and decide upon its continuance is incompatible with article 9, paragraph 3, of the Covenant.[19] In another case in which pre-trial detention was renewed several times by a prosecutor, the Human Rights Committee stated that it was not satisfied that the public prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an officer authorized to exercise judicial power within the meaning of article 9, paragraph 3, of the Covenant.[20]

32. Beyond the guarantees strictly associated with article 9 of the Covenant, the oversight role of the judiciary is essential to prevent violations of the human rights laid down in articles 7 and 10 of the Covenant with respect to persons deprived of liberty.[21] The main responsibility for the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment lies with the officials holding detained persons in custody. However, judges must exercise an important role in monitoring the treatment of persons deprived of liberty. The competent judicial authorities should therefore have at their disposal the official register of all detainees. The register should also be available to the relatives of the detained person, his or her lawyers and any person who has a legitimate interest in this information.[22] In accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, when a person makes an allegation to the judicial authorities that he or she has been subjected to torture or ill-treatment in the custody of the security forces, an effective, thorough and impartial investigation must be opened immediately and those responsible must be brought to justice without delay.[23]

33. During emergency situations, one of the special powers that the executive authorities have increasingly conferred upon themselves has been to deprive persons of liberty while limiting or excluding judicial oversight as to the legality of these measures.[24] The Special Rapporteur would like to recall that, while article 9 is not listed among the non-derogable rights in article 4, paragraph 2, of the Covenant, the guarantees contained in paragraphs 3 and 4 of article 9, as well as other safeguards related to detention, apply under any circumstances. These guarantees include the

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[18] Ibid., decision of 2 April 1990, communication No. 291/1988 (Finland).

[19] Ibid., concluding observations, Belarus (CCPR/C/79/Add.86), para. 10.

[20] Ibid., decision of 22 March 1996, communication No. 521/1992 (Hungary), para. 11.3.

[21] For further details on the role of judges in relation to the prevention of torture, see European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, twelfth general report (CPT/Inf (2002) 15), para. 45.

[22] Human Rights Committee, general comment No. 20, para. 11.

[23] See also the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles), recommended by the General Assembly in its resolution 55/89 of 4 December 2000.

[24] Report of the Special Rapporteur (A/HRC/4/25), paras. 51-53.

right to be informed of the reasons for arrest,[25] safeguards against abuses during questioning,[26] the maintenance of normal standards of proof[27] and the right to challenge the legality of detention before a judge.

34. The Human Rights Committee has expressly stated its belief that "States parties generally understand that the right to habeas corpus and *amparo* should not be limited in situations of emergency. Furthermore, the Committee is of the view that the remedies provided in article 9, paragraphs 3 and 4, read in conjunction with article 2, are inherent to the Covenant as a whole".[28] At the regional level, the Inter-American Court of Human Rights has determined that States may not derogate from the right to habeas corpus, even in exceptional circumstances.[29]

B. Due process safeguards

35. Article 14 of the Covenant guarantees that everyone is entitled to a hearing by a competent, independent and impartial tribunal to determine their civil rights and obligations and that everyone suspected of having committed an offence shall receive a fair trial. The guarantees codified in article 14 and the corresponding provisions of international law are both fundamental and complex. In his latest report to the Human Rights Council, the Special Rapporteur referred to those aspects of article 14 related to procedural guarantees and other institutional questions related to access to justice, such as the separation of powers and the independence of the courts.[30] On this occasion, the other requirements arising from article 14 will be examined. These oblige States to provide a series of measures to ensure observance of people's right to fair and public hearings, to be presumed innocent, not to be compelled to testify against themselves or to confess guilt, to be tried without undue delay, to defend themselves in person or through legal assistance, to be present during their trials and appeals, to obtain the attendance and examination of witnesses against them and on their behalf, to interpretation and translation, to a reasoned public judgement, and to an appeal. States must also

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[25] The courts of the United Kingdom of Great Britain and Northern Ireland declared illegal the practice, during the period that emergency laws were in effect in Northern Ireland, of not informing persons who had been arrested about the grounds for their detention. The European Court of Human Rights also referred to this practice in the case of *Ireland* v. *United Kingdom*.

[26] No statements or confessions or other evidence obtained in violation of article 7 of the Covenant may be invoked as evidence in any proceedings covered by article 14, including during a state of emergency (Human Rights Committee, general comment No. 32).

[27] Human Rights Committee, general comment No. 32, para. 33.

[28] Human Rights Committee, general comment No. 29, footnote 9.

[29] Inter-American Court of Human Rights, 1987 annual report (OEA/Ser.L/V/III.71, document 13), Advisory Opinion OC-8/87 of 30 January 1987 on habeas corpus under suspension of guarantees. In the opinion of the Court, guarantees relating to due process also cannot be suspended. See Inter-American Court of Human Rights, 1988 annual report (OEA/Ser.L.V/II.74, document No. 10, rev.1), Advisory Opinion OC-9/87 of 6 October 1987 on judicial guarantees in states of emergency.

[30] Report of the Special Rapporteur (A/HRC/8/4). The Human Rights Committee also studied this matter in detail and its latest general comment provides a practical explanation to improve the implementation of article 14. The Special Rapporteur also takes note of the final report submitted by Mr. Stanislav Chernichenko and Mr. William Treat to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "The administration of justice and the human rights of detainees: the right to a fair trial: current recognition and measures necessary for its strengthening" (E/CN.4/Sub.2/1994/24).

guarantee that the use of evidence obtained by torture and other forms of coercion, the retroactive application of criminal laws and the prosecution of an accused more than once for the same offence (*non bis in idem*) are prohibited.

36. It is evident from the Special Rapporteur's wide experience that limiting judges' scope of action, restricting their area of jurisdiction or undermining their independence jeopardizes most judicial guarantees, particularly the exclusion of evidence obtained by torture or other forms of coercion, the right to be tried without undue delay, the right to report violations of the rights of the accused to a competent judicial authority at all stages of the proceedings, the right to appeal judgements, and the fundamental right to be presumed innocent.

37. Another key aspect of this question is the role of the judiciary in countries where criminal investigations are not the responsibility of the judicial police but are under the direct jurisdiction of the executive branch, owing not only to the risk of impunity when investigations are aimed at establishing the responsibility of executive officials, but also to the need to safeguard individual rights and public freedoms in response to certain probative measures that may interfere with the exercise of such rights and freedoms — as in the case of telephone recordings, body and house searches or the monitoring of correspondence — with respect to the right to privacy (article 17 of the Covenant). The Special Rapporteur would like to recall the role that judges should play in these cases in order to ensure that such measures are legal, pursue a legitimate aim and are conducive to the achievement of that aim.

38. As established by the Human Rights Committee in its latest general comment[31] and as expressly stated by the Special Rapporteur in previous reports,[32] the principle of equality is a crucial aspect of access to justice. According to both, article 14 should be read in conjunction with article 2, paragraph 1, article 3 and article 26 of the Covenant, which prohibit discriminatory laws and protect the right to equality before the courts, in terms of both proceedings and the way in which the law is applied to individuals.

39. The guarantees for a fair trial contained in article 14 of the Covenant are not listed among the explicitly non-derogable rights mentioned in article 4. However, the development and implementation of international law point to the inclusion of a considerable part of the right to a fair trial in the list of rights that may not be suspended under any circumstances. This was recalled and discussed by the Special Rapporteur, on the basis of international legal provisions and case law, in his report submitted to the Human Rights Council at its fourth session.[33] The latest general comment of the Human Rights Committee has since reaffirmed this principle: "States derogating from normal procedures required under article 14 in circumstances of a public emergency should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation. The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights".[34]

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[31] Human Rights Committee, general comment No. 32, paras. 7-14.

[32] Report of the Special Rapporteur (A/HRC/8/4), paras. 15-54.

[33] Report of the Special Rapporteur (A/HRC/4/25), para. 49.

[34] Human Rights Committee, general comment No. 32, para. 6.

C. Grounds for concern

40. In the course of his mandate, the Special Rapporteur has had the opportunity to examine situations in which restrictions imposed on the operation of the justice system have led to arbitrary detentions and unfair trials. These are situations which involve, for example, the transfer of jurisdiction to military tribunals or the practice of trials with "faceless" judges.[35] Detentions and trials related to terrorism raise special concerns about judicial procedure. In this connection, the Special Rapporteur refers to the reports in which this matter has already been examined[36] and to the work of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

41. On this occasion the Special Rapporteur expresses serious concern about prolonged pre-trial detentions, detentions on health grounds or for the maintenance of public order, extraditions without judicial supervision, and trials based on traditional or religious justice conducted by tribunals that do not fully observe international human rights principles and may undermine the operation of the justice system.

42. The legal status of immigrants and asylum-seekers is a crucial issue today that affects millions of people, who face grave restrictions of their right to liberty in the context of immigration procedures and are frequently detained by administrative orders issued without judicial supervision. The Human Rights Committee has addressed this matter on many occasions, declaring that it is a violation of article 9 of the Covenant to prolong the deprivation of liberty of an immigrant without any justification and without the possibility of judicial review.[37]

43. The Special Rapporteur wishes to refer to the letter that he and nine other United Nations special procedures mandate holders sent to the States members of the European Union on 16 July 2008 in order to express their concern regarding the provisions of the European Union Return Directive adopted by the European Parliament on 18 June 2008. In the letter, the experts strongly questioned the provisions of the Directive and expressed their grave concern regarding, inter alia, the detention regime that is applied during the repatriation process, including in the case of unaccompanied minors and other vulnerable groups. The Directive establishes detention periods of between 6 and 18 months. It is a matter of serious concern that unaccompanied minors who are already in serious and delicate circumstances can be treated like criminals. To criminalize illegal immigration and use detention as a kind of punishment is, of course, a disproportionate response. The experts therefore recommended that alternatives to detention should be envisaged and that legislation should spell out more clearly States' obligations in this regard. They also stressed the importance of respecting the needs of vulnerable groups and, therefore, of protecting and establishing specific safeguards for victims of severe psychological or physical abuse and victims of sexual violence, including rape. Such persons must be treated with great care during the consideration of their cases.

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[35] With respect to military tribunals, see the report of the Special Rapporteur (A/61/384), paras. 18-47. Regarding trials with "faceless" judges, see A/HRC/4/25, para. 31. The Human Rights Committee has already addressed both matters in its general comment No. 32.

[36] Reports of the Special Rapporteur (A/60/321 and E/CN.4/2005/60). In this respect, see also general comment No. 32 of the Human Rights Committee.

[37] See, for example, the decision of 28 October 2002, communication No. 900/1999 (Australia), and the decision of 6 August 2003, communication No. 1014/2001 (Australia).

Lastly, the Directive does not provide sufficient legal or procedural safeguards with respect to either conditions of detention or judicial review, which, in any case, must be set in motion by the immigrant facing repatriation. Judicial review is not a privilege but a human right that States must guarantee, even in times of public emergency. Accordingly, the provision whereby a repatriation decision may include a ban on returning to the European Union for a period of up to five years could constitute a violation of the universal principle of non-refoulement.

44. The Special Rapporteur considers it relevant here to recall article 16, paragraph 8, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 15 of the Human Rights Committee on the position of aliens under the Covenant (para. 7) and deliberation No. 5 of the Working Group on Arbitrary Detention on the situation regarding immigrants and asylum-seekers (principle 8), which reads as follows: "Notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure; it shall set out the conditions under which the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned".[38] The Working Group has stated on other occasions that "even where illegal immigrants and asylum-seekers are concerned, any decision to place them in detention must be reviewed by a court or a competent, independent and impartial body in order to ensure that it is necessary and in conformity with the norms of international law and that, where people have been detained, expelled or returned without being provided with legal guarantees, their continued detention and subsequent expulsion are to be considered as arbitrary".[39] In all cases, the judicial authority must ensure that the person being extradited will not be subject to human rights violations in the country of destination and that the right of non-refoulement is scrupulously respected.

VI. Remuneration of judges

45. The deterioration in judges' working conditions is frequently brought to the Special Rapporteur's attention as a dangerous influence on the action taken by the judiciary;[40] this problem affects some regions more than others. The Special Rapporteur recalls that, in the same way that the judicial branch requires adequate resources in order to perform its functions in an efficient, competent and impartial manner, judges must receive decent salaries so as to be able to live off their judicial functions alone. It is a proven fact that when judges' salaries go down or are kept low, the proper administration of justice and, therefore, the reliability and reputation of the justice system suffer.

[38] Report of the Working Group on Arbitrary Detention (E/CN.4/2000/4), annex II.

[39] Report of the Working Group on Arbitrary Detention (E/CN.4/2004/3), para. 86.

[40] See, for example, the Special Rapporteur's preliminary note (A/HRC/4/25/Add.3, para. 4) and final report (A/HRC/8/4/Add.2, paras. 35 and 36) on his mission to the Democratic Republic of the Congo. The Human Rights Committee has also expressed concern regarding judges' low pay (see the Committee's concluding observations on the Democratic Republic of the Congo (CCPR/C/COD/CO/3), para. 21) and regarding delays in the payment of judges' salaries (see the Committee's concluding observations on Georgia (CCPR/CO/74/GEO), para. 12).

46. First, if the function of judges is not recognized properly in terms of working conditions and pay, the number of people entering the profession will decline, resulting, in the long term, in a shortage of people with the training and skills needed to do the job. Judge shortages seriously hinder access to justice. Second, a judge who does not receive sufficient remuneration may be forced to carry out other economic activities in parallel to his or her judicial functions, even though these activities may be incompatible with, or even detrimental to, the performance of his or her functions as a judge. Lastly, the Special Rapporteur wishes to point out that judges who are not adequately compensated may be more tempted to engage in corrupt practices, with all the disastrous consequences that this implies for the independence and impartiality of the judge in question and for the proper administration of justice and the reliability and reputation of the judiciary in general.

47. Even when the principle whereby judges' salaries may not be reduced has been enshrined in national legislation, this principle is often violated through a variety of Government measures. For this reason, the Special Rapporteur wishes to recall those international instruments that emphasize the need for fair salaries for judges: the Basic Principles on the Independence of the Judiciary (principle 11), the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (procedure 5), the Universal Charter of the Judge (article 13), the European Charter on the statute for judges (principle 6), the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (principle A.4 (m)), the Draft Universal Declaration on the Independence of Justice, also known as the Singhvi Declaration (articles 16 (a) and 18 (a) and (b)), the Charter of the Ibero-American Judge (article 32), the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA (Law Association for Asia and the Pacific) Region (principle 31), the Burgh House Principles on the Independence of the International Judiciary (principle 4) and recommendation No. R (94) 12 of the Committee of Ministers to Council of Europe member States on the independence, efficiency and role of judges (principles I (2) (a) (ii) and III (1) (b)).

VII. Key developments in international justice

A. International Convention for the Protection of All Persons from Enforced Disappearance

48. On 20 December 2006, the General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance, the importance of which the Special Rapporteur had underscored in paragraphs 7 to 17 of a previous report (A/61/384). While welcoming the fact that this valuable international legal instrument already has 73 signatory States and 4 States parties, the Special Rapporteur calls on all States to ratify the Convention as soon as possible so that the 20 instruments of ratification required for its entry into force may be obtained. Furthermore, he calls on all States to recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from individuals or States parties, in accordance with articles 31 and 32 of the Convention.

B. Update on cases before the International Criminal Court

49. The Special Rapporteur welcomes the following developments in the investigations currently under way:

1. Democratic Republic of the Congo

50. The decision by the International Criminal Court in April 2008 to unseal the arrest warrant for Mr. Bosco Ntaganda, former deputy Commander-in-Chief of the Forces patriotiques pour la libération du Congo (FPLC), is a major step forward. For this reason, the Special Rapporteur calls on the authorities of the Democratic Republic of the Congo, other countries affected by this individual's crimes and the international community to cooperate with the Court.

51. The Special Rapporteur has learned that the Court has postponed the trial of Mr. Thomas Lubanga, President of the Union des patriotes congolais, in order to safeguard the defendant's right to a fair trial, in particular his right to prepare his defence. The Special Rapporteur hopes that, once these procedural issues have been duly resolved, the trial will continue.

52. On 27 June 2008, the Court's Pre-Trial Chamber I opened the confirmation of charges hearing concerning Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui, both of whom are accused of war crimes and crimes against humanity. The victims' legal representatives participated in the hearing.

2. Central African Republic

53. On 3 July 2008, the Belgian authorities surrendered Mr. Jean-Pierre Bemba Gombo to the International Criminal Court. This and the fact that Mr. Bemba was arrested on 24 May 2008, just one day after the Court had issued a warrant for his arrest, is a testament to the spirit of cooperation shown by the Belgian Government in this case. Mr. Bemba, President and Commander-in-Chief of the Mouvement de libération du Congo (MLC), is accused of committing war crimes and crimes against humanity in the territory of the Central African Republic.

3. Darfur

54. On 5 December 2007, the Prosecutor of the International Criminal Court presented his sixth report to the Security Council. In his statement, he criticized the lack of cooperation by the Government of the Sudan and asked the Council to send a unanimous message to the State in question calling for compliance with Security Council resolution 1593 (2005) and the execution of the arrests requested by the Court. In April 2007, Pre-Trial Chamber I had issued arrest warrants for Ahmad Harun and Ali Kushayb on 51 counts of war crimes and crimes against humanity. On 4 June 2007, the Court had issued requests to the Government of the Sudan for the arrest and surrender of the two individuals. At the time of writing, neither of the two arrest warrants had been executed. The Special Rapporteur wishes to express his concern at the lack of cooperation by the Government of the Sudan with the Court and urges the Government of the Sudan and all other parties to the conflict to put an end to impunity for the crimes committed in Darfur, in accordance with resolution 1593 (2005) and the statement issued by the President of the Security Council on

16 June 2008.[41] On 14 July 2008, the Prosecutor of the Court applied for an arrest warrant for the Sudanese President, Omar Hassan Al-Bashir, who is accused of genocide, crimes against humanity and war crimes against the population of Darfur.

4. Uganda

55. On 8 July 2005 the International Criminal Court's Pre-Trial Chamber II issued five arrest warrants for five Lord's Resistance Army leaders on charges of crimes against humanity and war crimes. The Special Rapporteur is concerned to note that, more than three years after those warrants were issued, none of the five suspects has been detained.

C. Extraordinary Chambers in the Courts of Cambodia

56. The Special Rapporteur highlights the launching of the Extraordinary Chambers' activities. By the end of 2007 five suspects had been detained on orders from the Extraordinary Chambers, including former Head of State Khieu Samphan and Nuon Chea, known as "Brother Number Two". All five are accused of crimes against humanity, and three of them are also accused of war crimes. The Special Rapporteur also notes that the Pre-Trial Chamber held its first session in November 2007.

D. International Criminal Tribunal for Rwanda and International Tribunal for the Former Yugoslavia

57. The International Criminal Tribunal for Rwanda was established in 1994 to investigate and prosecute crimes of genocide, crimes against humanity and war crimes committed in Rwanda between 1 January and 31 December 1994. Since its establishment the Tribunal has brought proceedings against more than 50 individuals suspected of having perpetrated such crimes. For four years its President was Navanethem Pillay, currently the United Nations High Commissioner for Human Rights. On 5 August 2008 the Ministry of Justice of Rwanda published the report of the commission established by the Government in April 2006 to investigate France's alleged role in the genocide. The Ministry indicated that non-Rwandan nationals suspected of involvement in the genocide would be tried in a court of universal jurisdiction.

58. The International Tribunal for the Former Yugoslavia was established in 1993 to prosecute persons alleged to be responsible for serious crimes committed in the territory of the former Socialist Federal Republic of Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace. Since the Council, as of March 1999, had not yet decided when the Tribunal's jurisdiction would end, the crimes committed in the Kosovo crisis are within the Tribunal's jurisdiction.

59. As the two Tribunals were not established as permanent institutions, the Security Council, in its resolution 1503 (2003), set out a completion strategy under

[41] S/PRST/2008/21.

which the Tribunals would complete all trial activities at first instance by the end of 2008 and would complete all work in 2010.

60. On 4 June 2008 the Prosecutors of both Tribunals presented their reports on the status of implementation of the completion strategy to the Security Council. The reports indicate that despite the efforts made, a number of factors will delay the completion of activities beyond the established deadlines.

61. The Special Rapporteur is concerned that the departure of highly qualified judges and staff with experience in the Tribunals' work, referred to in both reports, may adversely affect the discharge of the Tribunals' mandates.

62. On 21 July 2008 Serbian authorities detained Radovan Karadzic, the former leader of the Bosnian Serbs in the Bosnia war (1992-1995), whom the Tribunal had accused of genocide. The Special Rapporteur welcomes this action and expresses satisfaction at the cooperation afforded by the Government of Serbia. In addition, he encourages the Serbian authorities to continue to cooperate with the Tribunal in order to find and detain Ratko Mladic.

63. With respect to the situation of the fugitives indicted by the International Criminal Tribunal for Rwanda, the information provided by the Prosecutor's Office, indicating a lack of cooperation by the Governments of Kenya and the Democratic Republic of the Congo, is troubling. The Special Rapporteur urges those Governments to meet their obligations in this regard.

64. Lastly, the Special Rapporteur trusts that the Security Council will extend the deadlines established in the completion strategy for the work of both Tribunals and will provide them with the resources they need in order to complete their important task.

E. Supreme Iraqi Criminal Tribunal

65. The Special Rapporteur notes with deep concern that persons sentenced to death in Iraq continue to be executed despite his repeated requests for suspension. The application of the death penalty in Iraq has constituted a serious violation of the right to the truth for the victims of crimes committed by the Saddam Hussein regime and, in the case of the execution of Awraz Abdel Aziz Mahmoud Sa'eed, victims of the attack on the United Nations that left Sergio Vieira de Mello and 21 others dead.

VIII. Conclusions and recommendations

66. **The role of the judiciary, together with that of international human rights protection bodies, is crucial for guaranteeing that states of emergency are declared and implemented in accordance with the principles governing them and that the measures taken in emergency situations do not interfere with the exercise of human rights and in no case interfere with rights considered non-derogable under international law. The Special Rapporteur accordingly urges States not to limit the operation of the justice system in such circumstances. In addition, he invites the General Assembly to pay special attention to the issue of human rights in states of emergency and recommends that a permanent list of countries that are in such circumstances be maintained**

and continuously updated, with information on the reasons given, a list of the rights suspended and the starting and ending dates of the measure, and that an international instrument be drafted on principles for the protection of human rights during states of emergency.

67. It is not only during states of emergency that States suspend or limit rights; there is a worrisome trend towards the restriction of rights in the name of defending national security, combating terrorism and controlling immigration. The rights most severely affected by these practices are the ones set out in articles 9 and 14 of the International Covenant on Civil and Political Rights. In such cases, the judiciary should play a key role in clarifying the limits of executive power where human rights are concerned. Although articles 9 and 14 of the Covenant are not included in the list of non-derogable rights contained in article 4, paragraph 2, they do comprise elements that may not be suspended under any circumstances.

68. Underpayment of judges or the practice of making their pay levels contingent on the decisions they take are serious impediments to the operation of the justice system and may compromise its independence and impartiality. The Special Rapporteur undertakes to explore this issue in more depth in his forthcoming reports and recalls that it is a universal principle that judges are entitled to adequate remuneration, commensurate with the responsibilities of their function, that shields them from political or financial pressures that may affect their independence and impartiality. It is on this principle that the idea of giving the judicial branch full budgetary autonomy is based.

69. The Special Rapporteur urges States to strengthen their political, diplomatic, judicial and financial support for the International Criminal Court. Such support should be reflected in, among other measures, close cooperation in the detection, capture and handover of persons indicted by the Court and the fulfilment, at the national level, of the legal requirements of the Rome Statute.

70. The Special Rapporteur has stressed the need to make every effort to investigate the criminal attack on the United Nations in Baghdad five years ago. In view of the lack of concrete results, he has proposed, and here reiterates, that a panel of high-level experts should be established for that purpose.